



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.337 OF 2015

JOSEPH GICHINI KARANJA.....APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

The Applicant, Joseph Gichini Karanja was charged with five (5) others with **attempted stealing of goods on transit** contrary to **Section 268(1)** as read with **Section 279(c)** of the **Penal Code**. The particulars of the offence were that on 27<sup>th</sup> May 2013 at Mlolongo along Mombasa Nairobi Highway within Machakos County, the Applicant, jointly with others, **attempted to commit a felony** namely theft of STC Pharmaceutical Products which were on transit from Mombasa to Kampala in motor vehicle registration No.KBA 525 Q Trailer No.ZC 7216. The Applicant was further charged with **personation** contrary to **Section 382(1)** of the **Penal Code**. The particulars of the offence were that on the same day and in the same place, with the intent to defraud, the Applicant represented himself as a senior police officer to Joseph Mungai. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charges. After full trial, the Applicant was convicted on both counts. He was sentenced to serve two (2) years imprisonment in respect of the 1<sup>st</sup> count while he was sentenced to serve eight (8) months imprisonment in respect of the 2<sup>nd</sup> count. Both sentences were ordered to run concurrently.

On 15<sup>th</sup> September 2015, the Applicant moved to this court in an application for revision to have his sentence reviewed. The Applicant told the court that he was not appealing the sentence but rather was pleading with the court for reduction of sentence. He stated that he was a first offender, was a diabetic who required a special diet to enable him maintain his condition. During his incarceration, his condition had deteriorated. He explained that the trial court did not take into account the fact that he was in remand custody for 23 months before he was convicted. He had served seven (7) months of the sentence that was imposed by the trial court. He pleaded with the court to exercise leniency on him, particularly taking into account that he was a family man and the sole breadwinner for his family. He was remorseful and had learnt his lesson during his period of incarceration. Ms. Atina for the State, having noted that the Applicant was in remand custody for 23 months before he was convicted, did not oppose to the court reviewing the custodial sentence that was imposed on the Applicant.

When the trial court sentenced the Appellant to serve the custodial sentence, it was exercising judicial discretion. As an appellate court, this court will only interfere with such exercise of judicial discretion if it is established that the sentence was manifestly harsh and excessive or was so lenient as to amount to a miscarriage of justice. This court will interfere with the sentence if it is established that the sentence was unlawful. In the present application, it was clear that whereas the sentence imposed on the Applicant was legal, the trial court did not take into account the fact that the Applicant was not released on bail during the pendency of the case before the trial court. The Applicant was not able to raise the bond terms imposed by the trial court. By the time the Applicant was convicted, he had remained in custody for a period of 23 months, unlike his co-accused who were released on bail pending trial.

This court is of the considered view that the trial court applied the wrong principle of the law when it sentenced the Applicant. This court also notes the charges that the Applicant was convicted of. This court

will therefore interfere with the sentence imposed by the trial court as a result of which the said custodial sentence imposed on the Applicant is set aside and substituted by a sentence of this court commuting the sentence of the Applicant to the period already served. The Applicant is ordered released from prison and set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER 2015**

**L. KIMARU**

**JUDGE**