

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 21 OF 2015

BETWEEN

JOHN SAMMY ASEWE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence of Hon. N. Kariuki, RM in Homa Bay Chief Magistrates Court Criminal Case No. 1037 of 2014 dated 11th December 2014)

JUDGMENT

1. The appellant, **JOHN SAMMY ASEWE**, was charged with the offence stealing motor vehicle parts contrary to **section 279(c)** of the ***Penal Code (Chapter 63 of the Laws of Kenya)***. He pleaded guilty and was convicted and sentenced to 4 years imprisonment. The appellant's appeal is against the sentence.
2. In the petition grounds filed on 9th April 2015, he urges the court to consider that he was a first offender and that consideration should be given to his age and the fact that he has now reformed.
3. Sentencing is essentially the discretion of the sentencing court. An appellate court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor or that it failed to take into account a relevant factor, or that it applied a wrong principle or short of these the sentence is so harsh and excessive that an error of principle must be inferred.
4. The main consideration the learned magistrate took into account was that the appellant was a first offender and that the offence was prevalent in the area. I have also looked at the pre-bail report filed in the subordinate court and it shows that a non-custodial sentence was not suitable since the appellant had loose ties to the community.
5. Given the fact that the appellant expressed remorse and considering his age, I reduce the term of imprisonment to 2 years from the date of sentence.

DATED and DELIVERED at HOMA BAY this 30th November 2015.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.