

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 210 OF 2015

REPUBLIC.....APPLICANT

VERSUS

PETER KARIUKI RURITHI.....RESPONDENT

(From the original conviction and sentence in Criminal Case No. 1715 of 2013 from the Chief magistrate's Court at Kibera by the Resident Magistrate Hon. C. Ondieki, delivered on 8th August, 2014)

RULING

This file was forwarded to this court pursuant to Section 362 of Criminal Procedure Code, so that the Court can satisfy itself as to correctness, legality and/or propriety of the sentence imposed to the Applicant in the Chief Magistrate's Court at Kibera Criminal Case No. 1715 of 2013.

The Applicant was charged alongside two others with the offence of stealing contrary to Section 268(1) as read with Section 278 A of the Penal Code. The particulars of the offence were that on the 25th May, 2013 at Kiserian area in Kajiado County, jointly with others not before court stole a motor vehicle make Toyota Hiace registration No. KBL 155X valued at Kshs. 1,000,000/= the property of Ayub Ngugi John.

The Applicant together with his co-accused were found guilty and were each sentenced to serve five years imprisonment.

By Chamber Summons filed in court on 23rd September, 2015, he urges the court to reduce the sentence as the same was harsh in the circumstances and ought to have been given the option of a fine.

Under Section 278(A) of the Penal Code, if a person is found guilty of stealing a motor vehicle, he is liable to imprisonment for seven (7) years.

The record of proceedings shows that no record of previous convictions was placed before the court in respect of the Applicant. The court then ought to have treated him as a first offender. The offence was serious and given that the Applicant was found red-handed in possession of the vehicle, a deterrent sentence was necessary. However, I note that besides the Applicant being a 1st offender, the vehicle was recovered. The court should then have explored the need for sentencing the accused persons to a fine with a default sentence.

In the result, the sentence imposed by the trial court is set aside. I substitute it with an order that the Applicant be and is hereby sentenced to pay a fine of Kshs. 150,000/= in default, serve 12 months imprisonment effective the date of sentencing of the trial Court.

DATED and DELIVERED this 24th day of November, 2015.

G.W. NGENYE-MACHARIA

JUDGE