



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 310 OF 2012

JOSPHAT KIMANI WAMOKA.....1ST APPELLANT

JACKSON NJOROGE WAMBUI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of the Chief Magistrate's Court

at Milimani Criminal Case No.805 of 2011 delivered on 31/10/2012 by P.M. Ndwiga, PM).

JUDGMENT

The Appellants were charged with robbery with violence contrary to Section 296(2) of the Penal Code. The particulars were that on the 27th day of May, 2011 along Moi Avenue in Nairobi within Nairobi Area Province, jointly with another who was before court robbed Jackline Waithera Muigai of a mobile phone make IDEOS HUAWEI worth Ksh. 8,500/=and immediately after the commission of such robbery used actual violence to the said Jackline Waithera Muigai.

They were however convicted of a lesser offence of robbery and sentenced to each serve seven years imprisonment. Their appeals were consolidated. The first Appellant's appeal is solely against the sentence and is premised on eight grounds which are condensed into the following;

1. That he has suffered during the time he has been in prison and that he is remorseful.
2. That he was engaged in vocational studies while in prison therefore he is a reformed person.
3. That he has suffered from ulcers and that since his conviction his health has deteriorated due to psychological and mental stress.
4. That he prays for leniency from this Honourable Court and requests that the sentence be reduced to a non-custodial one.

In addition to the above grounds of appeal, he also submitted that he is the sole breadwinner of his family. He prayed that the appeal be allowed.

The second Appellant's appeal is solely against the sentence. His grounds of appeal are that;

1. He has so far served two years and two months of his jail term and that he is extremely remorseful.
2. That he has undergone various rehabilitation courses and promises never to engage in criminal acts.
3. That he was the sole breadwinner of his family before his arrest.
4. That the sentence imposed on him by the trial court was so harsh therefore he prays for a non-custodial sentence.
5. That he is suffering from cancer and that his health condition has continued to deteriorate while in jail.

In his submissions he merely reiterated his grounds of appeal.

Under Section 296(1) of the Penal Code, any person who commits the offence of robbery is liable to imprisonment for fourteen years. The sentence in this case was passed on 31st October, 2012. That means that as at date, the Appellants have already served three years each in prison. The circumstances of the case were that both Appellants were street boys. They accosted the complainant along Moi Avenue wherein they snatched a mobile phone from her. In an attempt to wade away the complainant they threw human faeces at him. Definitely this was an inhuman act against the complainant. They needed not throw the faeces at her after having successfully robbed him her of the mobile phone. All the same, it is important to note that both have reformed having learnt some life support skills in the prison. It is hoped that when they exit the prison, they shall not return to the streets to revert to the odd behaviour. I also think that they have been punished enough for the period they have served the sentence.

In the circumstances, I allow the appeal. I quash the conviction and set aside the sentence. I order that both Appellants be and are hereby set free unless they are otherwise lawfully held.

DATED and DELIVERED at NAIROBI this 17th Day of November, 2015.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. 1st Appellant in person.

2. 2nd Appellant in person.

3 M/s Nyaundo for the Respondent.