

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 11 OF 2013

HASSAN KASIM ODUOR APPELLANT

V E R S U S

REPUBLIC ACCUSED

(Appeal against conviction and sentence from the judgment of [H. WANDERE, PM] in the Senior Resident Magistrate's Court at Mumias in Criminal Case No. 1085 of 2012)

J U D G M E N T

The appellant was charged with the offence of preparation to commit a felony contrary to **section 308 (2)** of the **Penal Code**. The particulars of the offence are that the appellant *on the 26.12.2012 at Mumias Crown Bus parking yard Mumias Township in Mumias district within Kakamega County not being at his place of abode had with him an article namely spanner for use to open a motor vehicle starter nuts with intent to steal a starter from motor vehicle registration No. KBE 391 V make VD Nissan Bus valued at KShs.125,000/= the property of Crown Bus devices company.*

The appellant pleaded guilty to the charge and was sentenced to serve 5 years in prison. The grounds of appeal are that the sentence is harsh, his mitigation was not considered, he was a first offender and that he is remorseful. The State Counsel opposed the appeal and submitted that the conviction is safe.

The record of the trial court shows that initially the appellant refused to take the plea but later accepted to do so and pleaded guilty. The facts were read and explained to him in Kiswahili and he pleaded guilty. The offence occurred on the 26.12.2012 at midnight whereby the appellant pretended to be a mechanic of Crown Bus having been sent from the Mombasa office. He pretended to check on a bus registration number KBE 391 V but the driver noted that the driver was trying to open the starter of the bus which had no mechanical problem. It is clear from the record that the appellant was not an employee of Crown Bus and was on a mission to steal. I find the conviction to be safe.

On the issue of sentence, the maximum sentence under section 308 (2) is 10 years imprisonment. The appellant was sentenced to serve 5 years imprisonment. Taking into account the facts of the case I find the 5 year imprisonment to be harsh. The same is set aside and replaced with term of 2 years imprisonment from the date of conviction. Apart from the sentence I do find that the appeal lacks merit and the same is disallowed. The appellant shall serve 2 years imprisonment from the date of conviction.

Delivered, dated and signed at Kakamega this 18th day of February 2014

SAID J. CHITEMBWE

J U D G E