



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 432 OF 2010

REPUBLICRESPONDENT

Versus

IBRAHIM RASHID OMAR.....APPELLANT

[Being an appeal from the original sentence by Hon. A. Lorot S.R.M. dated 14th July, 2010 at Makadara CMCCR Case No. 3678 of 2008.]

JUDGEMENT

This is a single judge appeal where the appellant makes a petition against sentence only as follows;

- 1. That although the trial court found me guilty I do hereby kindly request this honorably court to consider substituting the sentence to a probation term.*
- 2. That I do pray for a reduction of the sentence imposed in case of probative times is not accorded as prayed.*
- 3. That I do apply for a copy of the court's proceedings and do wish to be present in court during the hearing date of this appeal.*

The notable aspect of this appeal is that it is only an appeal against sentence. It does not at all touch on conviction. Secondly, the appellant was initially charged with robbery with violence contrary to S. 296 (2) of the Penal Code but at the close of the trial he was found guilty and convicted of simple robbery contrary to S.295 as read with S.296(1) of the Penal Code. He was sentenced to six (6) years imprisonment.

The matter came for hearing on 15th October, 2013 whereupon the appellant intimated that he wished to proceed orally and did not have anything in writing. He pleaded that at the time for commission of the offence, he was schooling. His parents had passed on and therefore prayed for a reduction of sentence from six years to a probationary term.

Ms Spira for the respondent submitted that the appellant would and should demonstrate to court why the sentence should be reduced. She did not offer any outright opposition to the court's direction on sentence.

Judgement was delivered in open court on 14th July, 2010. The appellant was sentenced to six years imprisonment with a further order that he be placed under police supervision upon completion of sentence. The accused was committed to prison on 17th July, 2010 and has now served 3 years and eleven months of the sentence.

The appellant was arrested on 18th September, 2008. By the time of the conclusion of his case he had served about two years (1 year, 10 months) in custody. This, coupled with the period of served sentence amounts to five years and ten months (5 years, 10 months) of sufferdom or payback by way of curtailed personal liberty.

The gravity of the offence(s) committed by the appellant is another factor for consideration in the determination of this appeal. In the instant case, the complainant, PW1 in his testimony testified that he was robbed Kshs.300.00 and a motorolla C113 cellphone all valued at Kshs.2,000.00. He further testified that this money was recovered but nothing is said of the cellphone. This is corroborated by the other witnesses.

Section 354 of the Criminal Procedure Code gives power to the High Court to deal and vary conviction and sentence in appeals. S.354 3(a) and (b) particularly direct the court on its dealings in appeals against conviction or sentence or both conviction and sentence as follows;

Section 354. (3)The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may-

(a) in an appeal from a conviction –

(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction;

(ii) alter the finding, maintaining the sentence, or, with or without finding, alter the nature of the sentence; or

(iii) with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

The accused is a young adult of school going age who testified that at the time of commission of the offence he had been school going. He would wish to be released from prison to enable him continue schooling.

The essence of the criminal justice system and criminal law in particular is not only to correct and punish criminal action but also to rehabilitate criminal offenders for re-absorption to society. It is not only penal but transformative. It is my feeling that the current circumstances and appeal are a proper candidate for implementation of this ideal. It is a proper case for allowing a situation where the appellant can be awarded yet another chance to reorganize his life and come out clean. After all, the period of sentence served is not only adequate punishment for the offence but also time enough for rehabilitation.

This is a situation which calls for concerted efforts by society in the rehabilitation and absorption of reformed miscreants. It is the onus of our justice system to facilitate this kind of situation and not necessarily condemn the likes of the appellant in entirety. We all require a re-think and reflection on this.

I am inclined to exercise my power as enshrined in S.354 aforecited and review the sentence of the appellant favourably. He prayed that this sentence be reduced and that he be placed on probation. He also testified that his parents are deceased thereby demonstrating the desperation of his situation. I take all this and other factors into consideration in allowing the appeal and setting the appellant free unless otherwise lawfully held.

I consider the period of sentence already served to be sufficient in the circumstances. I allow the appeal against the sentence and set the Appellant at liberty unless otherwise lawfully held.

Dated, delivered and signed the 17th day of June, 2014.

D.K.NJAGI MARETE

JUDGE

In the presence of:

-: Court clerk
-: Appellant
-: For the Appellant
-: For the State/respondent