



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO. 383 OF 2013**

**PETER KARANJA KIBE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal against sentence in a judgment delivered in Thika Chief Magistrate's Court Criminal Case No. 2243 of 2011(Hon. B.J. Ndeda) on 4<sup>th</sup> October, 2011)*

**JUDGMENT**

The appellant was charged with the offence of robbery contrary to **section 296 (1)** of the **Penal Code**; according to the particulars of the offence, it was alleged that on the 7<sup>th</sup> day of May, 2011 at Kenol in Murang'a County, jointly with others not before court, the appellant robbed Esther Wanjira Kiiru of a hand bag, voting card, a table cloth, Nivea body lotion, Fair & Lovely body lotion and Kshs. 500/= all valued Kshs. 3,000/= and immediately before such robbery threatened to use actual violence on the said Esther Wanjiru Kiiru.

It is not clear why the appellant was charged with simple robbery when the particulars show that the robbery was aggravated and fit the description of the offence of robbery with violence as defined under **section 296(2)** of the **Penal Code**.

Be that as it may, the appellant was found guilty as charged and was sentenced to serve twelve years in prison. The appellant did not contest the conviction; his only problem with the decision of the subordinate court is the sentence. According to the appellant, the sentence meted out against him was too harsh and excessive and for this reason he has asked this court to consider reducing it to a non-custodial sentence.

Being the first appellate court, it would have been necessary for this court to evaluate the entire evidence as presented at the trial before coming to its own conclusion as to whether the decision of the learned magistrate should be upheld (see **Okeno versus Republic (1972) EA 32**); however, since the appellant has not challenged the conviction, such an exercise would not serve any useful purpose other than being academic. The only issue that this court is concerned with is whether the sentence of twelve years imprisonment was harsh or excessive as argued by the appellant.

While opposing the appeal, the learned counsel for the state, Ms Keya, opposed the appeal and submitted that the maximum sentence for the offence for which appellant was convicted is fourteen years imprisonment; in the learned counsel's view, a sentence of twelve years was not severe in the circumstances.

**Section 296(1)** of the **Penal Code** under which the appellant was charged reads:-

**296. (1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.**

I would agree with the learned counsel for the state that the sentence meted out by the learned magistrate against the appellant is lawful as it is within the limits expressly provided for in **section 296(1)** of the

**Penal Code.**

The record shows that when he was accorded the opportunity to mitigate, the appellant said nothing more than asking for a non-custodial sentence; he did not give any reason as to why he thought he deserved a non-custodial sentence. In the absence of any mitigating circumstances, there was no basis or material upon which the trial court could exercise its discretion and impose a lighter sentence other than what it meted out. There is therefore no reason to disturb the decision of the learned magistrate.

The appellant's appeal is, in the circumstances, not merited; I would uphold the sentence against him and dismiss the appeal. It is so ordered.

**Signed, dated and delivered in open court this 24<sup>th</sup> day of October, 2014**

Ngaah Jairus

**JUDGE**