



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 21 of 2013

SAMSON NKUNJA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

The Appellant was tried by the Chief Magistrate's Court Meru, for one count of robbery with violence contrary to section 296(2). He was found guilty of the reduced charge of robbery contrary to 296(1) of the Penal Code. He was then sentenced to 8 years imprisonment. The Appellant was aggrieved by the sentence and therefore filed this appeal. In his grounds of Appeal he stated as follows:

1. The Appellant in this case wish to appeal in the high Court not because the trial magistrate erred in the running of the case but I appeal to the High Court to re-examine the judgment in this case and the mitigation of I the Appellant.

2. I beg the honourable court to have mercy on me as I had laid down in my mitigation and also due to my poor and deteriorating health which has worsened since I was incarcerated in prison.

3.I have also undergone physical and mental torture, thus prompting me to appeal to the honourable court to reduce or set aside my sentence.

4.I wish to be present at the hearing of this appeal to enable me to adduce more grounds.

When the case came up for hearing the Appellant urged the court to consider that he has served more than seven years and was left with less than one year to go. He urged the court to find that he has suffered anguish waiting for his appeal and promised the court that he was a reformed man who had under gone training. He said that he was in the class of prisoners who pioneered sitting of KCSE examinations by prisoners. He said that once released he will be very useful to the society and asked the court to be merciful to him.

The State was represented by Mr. Moses Mungai learned state counsel. Mr. Mungai did not oppose the appeal.

I have considered this appeal against the sentence. The Appellant was convicted of simple robbery

contrary to section 296(1) of the Penal Code, and on the 2nd February 2006 he was sentenced to 8 years he has imprisonment. He has therefore served 7 years and two months.

I have perused the record of proceedings and have found that the Prosecution treated the Appellant as a first offender. The Appellant had also given mitigation saying that he had a wife and children and was asking the court for leniency. The learned trial magistrate as he then was did not take anything into consideration before sentence. The record shows under the word sentence “**to serve 8 years imprisonment**”

It is important that a trial court, before passing sentence makes a small statement detailing what it is he has considered in arriving at the sentence imposed. That would allow an appellate court to determine whether correct principles of sentencing were applied, and whether to disturb the exercise of discretion in relation to the sentence or not. Having said nothing before sentence leads to the conclusion that the learned trial magistrate did not consider the Appellant’s mitigation and also the fact that the Appellant was a first offender. All these were part of the mitigation of the Appellant and the statement of the prosecution before sentence.

I find that in those circumstances the sentence was offensive. In the result I will allow the Appeal against the sentence by reducing it from 8 years imprisonment to the period already served. The Appellant should be set at liberty unless he is otherwise lawfully withheld.

DATED SIGNED AND DELIVERED THIS 18TH DAY OF APRIL 2013.

LESIIT, J.
JUDGE.