



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 21 of 2003

(From Original Conviction and Sentence in Criminal Case No. 199 of 2013 of the Chief Magistrate's Court at Mombasa – I. Ruguru (SRM))

MOHAMED SAID MWAMAYO..... APPELLANT

- Versus -

REPUBLIC RESPONDENT

J U D G M E N T

The Appellant was convicted and sentenced to one year imprisonment for the offence of being in possession of public stores contrary to Section 324(2) as read with Section 36 of the Penal Code.

The particulars are that on the 22nd day of January 2013 at Majengo Mapya in Likoni – Mombasa County he had in his possession public stores namely – In-Patient Register MOH 301 of the Ministry of Health to which the items of stores belong such a property being reasonably suspected of having been stolen or unlawfully obtained.

This appeal is on sentence punishment under Section 324 of the Penal Code is not expressly provided. A reading of the Section provides that any person convicted under that Section is guilty of a misdemeanor.

Section 36 of the Penal Code provides for general punishment thus-

“When in this code no punishment is specially provided for any misdemeanor, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.”

The circumstances surrounding this case is that the Appellant was a suspected member of Mombasa Republic Council an outlawed outfit. His house was searched and a Register was recovered which was the property of Kenya Government. It had names of people, their designation duties and their phone numbers.

The Appellant pleaded guilty to the charges. After conviction he was treated as a first offender.

The trial Magistrate proceeded to sentence him to one year imprisonment without the option of a fine. Having been treated as a first offender it was only reasonable that he be afforded the option of a fine.

The sentence of one year imprisonment is fair in the circumstances of this case but the option of a fine is deemed necessary. The Appellant stands fined Kshs. 80,000/- in default one year imprisonment from the time of conviction.

Dated and delivered at Mombasa this 27th day of May, 2013.

M. MUYA
JUDGE

Dated and delivered in open court in the presence of:-

Mr. Ayodo for State

Miss Mutua holding brief for Okanga Counsel for the Accused

Court clerk – Mr. Musundi