



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
HIGH COURT CRIMINAL APPEAL NO. 18 OF 2011
DERICK WEKESA JUMA APPELLANT
VRS
REPUBLIC..... RESPONDENT

The appellant faced three counts being as follows;-

COUNT I

OBTAINING MONEY BY FALSE PRETENCES CONTRARY TO SECTION 313 OF THE PENAL CODE

DERICK WEKESA JUMA: On the 11th day of January 2010 at Nairobi within Nairobi Province, with intend to defraud, obtained from Johsua Kirimi Ringera a sum of Kshs.6,000 by falsely pretending that he was in a position to employ the said Joshua Kirimi Ringera as a turn boy of a certain trailer which goes to Uganda and Rwanda.

COUNT II

STEALLING CONTRARY TO SECTION 275 OF THE PENAL CODE

DERICK WEKESA JUMA: On the 11th day of January 2010 at Nairobi within Nairobi Province stole one mobile phone make Nokia 1600 valued at Kshs.3500/= the property of Joshua Kirimi Ringera.

COUNT III

HAVING SUSPECTED STOLEN PROPERTY CONTRARY TO SECTION 323 OF THE PENAL CODE

DERICK WEKESA JUMA: On the 25th day of January at Meru township in Meru Central District within Eastern Province, having been detained by Corporal Mwaniki and PC Kinyua, as a result of the exercise conferred by section 26 of the Criminal Procedure Code, and having in position (i) a pass port bearing the name of Churchil Ongoma Yanda (ii) certificate of good conduct bearing the name of Churchil Ongoma Yanda (iii) Certificate of birth bearing the name of Churchil Ongoma Yanda (iv) Family Back access card bearing the name of Joseph Kamau Kabura (v) National identity card bearing the name of Joseph Kamau Kabura (vi) Electors card bearing the name of Joseph Kamau Kabura (vii) Taxi payer registration certificate bearing the name of Dickson Chege Maina (viii) Photocopy certificate of birth bearing the name of Joan Nabwire Anduga reasonably suspected to have been stolen or unlawfully obtained.

The appellant pleaded not guilty to the three counts. That after hearing his case the trial court convicted the appellant and sentenced him to two (2) years in each of the three counts and sentence was ordered to run consecutively. Being aggrieved by the conviction and sentence he preferred this appeal setting out 2 grounds of appeal being as follows:-

1. I pleaded NOT guilty at trial.

2. Here states grounds of appeal and use a separate sheet if Necessary.

Mr. Riungu, who appeared for the appellant abandoned the appeal against conviction and pursued appeal against the sentence. Mr. Riungu urged court to reduce the sentence or alter the same in such away to afford the release of the appellant arguing that the appellant has now served 3 years and 4 months and the remaining period is only 8 months. He relied on the provisions of section 354 (3) (a) (ii) of the Criminal Procedure Code which provides:-

“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 -

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence;.....”

He further submitted that the appellant is remorseful and has been trained on how to earn his living honestly. He submitted that the appellants is now an electrician and that he has even become a preacher to the other inmates.

Mr. J. Motende learned state counsel did not oppose the appeal having considered the nature of the offence and period served and the period remaining.

Count I with which the appellant was charged states upon conviction the accused is liable to imprisonment for 3 years whereas Count II carries a sentence of 3 years.

I have considered the sentence imposed of 2 years on each of the three counts which was to run consecutively and the value of the subject matter as well as the period so far served by the appellant. I have considered the submissions by the appellant’s counsel and the fact that he is remorseful and is a preacher to other inmates and that he can now earn decent living as he has now been trained as an electrician.

The sentence imposed upon the appellant is altered and/or reduced to the period served to date so as to afford the appellant’s immediate release.

The appellant is therefore ordered to be released forthwith.

DATED AT MERU THIS 30TH DAY OF OCTOBER 2013.

J.A. MAKAU

JUDGE.

DELIVERED IN OPEN COURT IN PRESENCE OF:-

Mr. A.G. Riungu for appellant

Mr. J. Motende for State.

J.A. MAKAU

JUDGE.