



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 217 OF 2012

JOHN KAMANDE MWANGI MIANOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(APPEAL ARISING FROM THE JUDGMENT OF THE SENIOR RESIDENT MAGISTRATE COURT AT BARICHO BY J.N. MWANIKI – CRIMINAL CASE NO. 464 OF 2010 ON 7/6 /2010)

JUDGMENT

JOHN KAMANDE MIANO , the appellant herein had been charged in the lower court with the offence of burglary contrary to section 304(2) and stealing Contrary to section 279(b) of the penal code .

The particulars of the offences as stated in the charge sheet are as follows:-

JOHN KAMANDE MIANO : On the night of 4th day of June , 2010 at Sagana Town In Kirinyaga District within Central Province broke and entered the hotel of JASON KIARO GICHAJ with the intent to steal therein and did steal therein one radio make TOPSONIC , one hurricane lamp , 18 pancakes and 30 snacks the property of the said JASON KIARO GICHAJ all being the value of Kshs 1430/-

When the appellant was arraigned before the Senior Resident Magistrate’s court at Baricho on 7th June, 2010 , the charge sheet and particulars thereof were read over to him and he pleaded guilty to the offences as charged. He was consequently convicted on his own plea of guilty and was sentenced to serve a period of 7 years imprisonment for each limb of the offence . The term of imprisonment was to run concurrently .

The appellant was dissatisfied with the conviction and sentenced imposed by the trial court . He filed the present appeal citing the following grounds:-

- 1. The Learned trial magistrate erred in law and in facts when he convicted me by not failing considering that even the accused could have possessed the alleged stolen item as there was no document produced in court to show that the exhibit belongs to the complainer.**
- 2. The Learned trial magistrate erred in law and in facts by failing to summon a key witness who was alleged to be the buyer of the alleged stolen item.**
- 3. The Learned trial magistrate erred in law and in facts when convicting me as he relied on a single evidence i.e. P.W1 who was the watchman and P.W2 who is the complainer.**

4. **The learned trial magistrate erred in law and in facts by not considering that my human rights were violated as I was kept in police custody for four days instead of 24 hours.**
5. **The learned trial magistrate erred in law and in facts by failing to consider my defence which was not shaken by the prosecution side.**
6. **The learned magistrate erred in law and in facts by not considering that the accused and the complainer PW1 had a long term grudge as the former was once an employee of the complainant .**

When the appeal came up for hearing today in the morning, the appellant abandoned his appeal on conviction and urged the court to review the sentence imposed on him by the learned trial magistrate. He alleged that the sentence was too long and ought to be reduced . He claimed that he had served a period of 3 years and 4 months in prison during which time he had learnt that crime does not pay and pledged not to commit any other offence in future.

Mr Sitati learned state Counsel in his submissions before the court opposed the appellant's appeal against sentence mainly on grounds that the sentence passed by the trial court was lawful and lenient considering that an offence of burglary attracts a penalty of 10 years imprisonment . Though acknowledging that the appellant was a first offender , counsel nevertheless urged the court to dismiss the appeal and uphold the sentence.

Having perused the record of the lower court and considering the grounds cited by the appellant in the support of appeal, It is my view that the said grounds appear misconceived or to say the least misplaced since they are already meant to support an appeal conducting a full criminal trial but not a conviction based on the appellants own plea of guilt like in the one which was challenged by the appellant in this case.

It is therefore apparent that the appellant herein made the right decision in abandoning his appeal on conviction.

Turning to his challenge on the sentence meted out against him by the learned trial magistrate , I have carefully considered the oral submissions made by the appellant in support of his appeal against the sentence and the submissions in opposition thereto by the learned state counsel

I have noted that the state has confirmed to this court through submissions by Mr Sitati that the appellant was infact a first offender.

I have also considered that fact that the stolen items were recovered and the trial court made an order that they be released to the complainant herein . The stolen items were valued at Kshs 1430/- . Given the value of the stolen items and the fact that they were recovered and considering that the appellant was a first offender , I am persuaded to find that the sentence of 7 years imprisonment imposed by the learned trial magistrate for each limb of the offence though lawful was manifestly harsh and excessive in the circumstances of this case.

The record shows that the appellant was convicted and sentenced on 7.6.12. This means that he has now served a period of 3 years and 4 months imprisonment.

I find that the period already served is sufficient punishment for the offences threw appellant committed. The appellant in his submissions claimed that the period he has served in prison has helped him realize that crime does not pay. He claimed that he is now a reformed man and pledged not to commit any offences in future.

I wish to observe that in determining the kind of sentence to impose on an accused person, the trial court must be guided by several principles . One of those principles is that sentence should b e geared towards reforming the accused person. If the court were to accept the appellant's word that the time he has spent in prison has helped him reform and he is now ready to be a law abiding citizen, it would follow that one of the most important objectives of sentencing has been met in this case.

In view of the foregoing, I am inclined to allow the appeal against the sentence imposed on the appellant in this case.

I set aside the sentence and substitute it with the period already served.

I therefore direct that the appellant be released forthwith unless otherwise lawfully held .

C. GITHUA

JUDGE

15.10. 2013

AT 2.30 P.M.

BEFORE C.W GITHUA – JUDGE

C.C. KARIUKI

Appellant present

Mr Sitati for the state also present

Interpretation : English/Kikuyu

COURT- Judgment , read signed and delivered in open court