

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANGA

HIGH COURT CRIMINAL APPEAL NO. 156 OF 2013

(Appeal from the Original Conviction and Sentence in Criminal Case No. 58 of 2011 dated 11th February 2011 in the Senior Resident Magistrate's Court at Kangema by Hon. D.Orimba - SRM)

JOHN MICHUKI WAWERU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The Appellant John Michuki Waweru was convicted by the Hon. SRM Orimba on Appellant's own plea of guilty for the offence of robbery contrary to Section 278(a) of the Penal Code. He was sentenced to 5 years.

He has appealed to this Court against the sentence. Appellant states the sentence of 5 years is oppressive and was not meant for rehabilitative purposes. He says the sentence was unjustified and he had pleaded guilty so that he suffers a lower sentence. He seeks that that the Court reduces the sentence or acquits him on humanitarian grounds. He was a first offender and says he has learnt his lesson. He suffers from asthma now.

Mr. Okeyo stated the Appellant was charged alongside a co-accused and upon conviction for the theft of the motorcycle they were sentenced to 5 years. The Section under which they were charged provides for a maximum sentence of 7 years. The record shows they pleaded guilty and thus the learned State Counsel left the matter of reduction of sentence to this Court.

In the case before me, the Appellant who pleaded guilty now only appeals against sentence. The guiding principle in determining whether this Court as the first appellate Court should interfere with the sentence imposed by the trial Court is, as settled in the case of **Diego v. Republic [1985] KLR 621** was the sentence manifestly harsh and excessive or is it inordinately low in the circumstances?

Why would an Appellate Court consider a reduction in sentence? A reduction in sentence is appropriate because a guilty plea avoids the need for a trial thus enabling other cases to be disposed of more expeditiously, it shortens the gap between charge and sentence, saves considerable cost, and, in the case of an early plea, saves victims and witnesses from the concern about having to give evidence. The reduction principle derives from the need for the effective administration of justice. I posit - Did the trial Magistrate give a manifestly harsh sentence? Or was the sentence inordinately low? The trial Magistrate gave a sentence of 5 years against a statutory maximum of 7 years. This to my mind was excessive in the circumstances. The Appellant had pleaded guilty, the Republic was spared an inordinately lengthy trial. In the premises I would apply the above principles and alter the sentence and reduce it to the period served. I hope the time in custody has given him room to repent and recant from such behavior. It is hoped that Appellant will keep to strict observance of the law and be a law-abiding citizen.

Dated, signed and delivered this 27th day of November 2013

Nzioki wa Makau

JUDGE