



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL APPEAL NO. 34 OF 2012

NIXON CHERUIYOT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence made by the learned Senior Resident magistrate at Sotik court (Hon. M Okuche) in Sotik Senior Resident Magistrate's court criminal case No.1500 of 2012 on 15/05/2012)

JUDGMENT

NIXON CHERUIYOT, the appellant herein was convicted on his own plea of guilty for the offence of robbery contrary to **Section 296 (1)** of the **Penal Code**. The particulars of the offence, are that on 13/05/2012, at Cheboin Location in Bureti District within the Rift Valley Province robbed Geoffrey Kiprono Ng'eno of Kshs.20,450 and at the time of the robbery used actual violence to the said Geoffrey Kiprono Ng'eno. The appellant was thereafter sentenced to seven (7) years imprisonment. Being dissatisfied, the appellant filed this appeal in which he put forward the following grounds in his memorandum of appeal through the firm of Kipkorir Tele & Kitur Advocates:

1. **The trial Magistrate erred in law and in fact by allowing the trial of the accused in a language he did not understand.**
2. **The appellant's constitutional rights were violated at the time of his arrest, and after his arrest by being subjected to mob injustice.**
3. **The trial Magistrate erred in law and in fact by not allowing the accused to choose, and be represented by, and Advocate or informing him of his right.**
4. **The trial Magistrate erred in law and in fact by not taking into consideration the appellant's instant plea of guilty, his health status and mitigation which ought to have tilted the decision for proper management.**
5. **The trial Magistrate erred in law and in fact by not considering the age factor of the appellant.**
6. **Without prejudice to the foregoing, the sentence passed against the appellant was harsh and excessive especially being a first offender.**

When the appeal came up for hearing, Mr. Mutai learned Senior Principal Prosecuting Counsel urged this court to dismiss the appeal on the basis that the sentence meted out is neither harsh nor excessive. The appellant had initially sought to challenge both the conviction and sentence. But he

abandoned the appeal against the conviction when he appeared for hearing. Therefore, the question before me is whether the sentence of seven (7) years imprisonment is harsh and excessive? The record shows that the appellant was sentenced to seven years (7) imprisonment. Before pronouncing the sentence, the record shows the trial Magistrate considered appellant's Mitigation but noted that the offence is serious. The appellant is said to be a first offender. The maximum sentence prescribed by law for such an offence is 14 years. I think a sentence of seven years (7) for a first offender who pleaded guilty and who is remorseful is abit high. I am minded in the circumstances of this appeal to interfere with the order on sentence. Consequently, I set aside the sentence of seven years and substitute it with a sentence of five years. The sentence to run from the date of sentence by the trial court.

Dated, Signed and delivered this 22nd day of November, 2013

J.K.SERGON

JUDGE

In open court in the presence of:

Appellant in person

In the absence of Director of Public Prosecution but with Notice

Mr. Korir- Court clerk