

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 86 OF 2012

(An Appeal arising out of the conviction and sentence of T. MWANGI – SRM delivered on 8th March 2012 in Makadara CMC. CR. Case No.670 of 2010)

KENNEDY OTIENO ODHIAMBO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, Kennedy Otieno Odhiambo was charged with the offence of **Robbery with Violence** contrary to **Section 296(2)** of the **Penal Code**. The particulars of the offence were that on 17th December 2009 at Gitathuru area, Kariobangi Estate Nairobi, the Appellant while armed with a dangerous weapon namely a knife, robbed Rusla Achieng Obura of a mobile phone make Motorola L6 and at or immediately before or immediately after the time of such robbery used actual violence to the said Rusla Achieng Obura. When the Appellant was arraigned before the trial court, he pleaded not guilty to the charge. After full trial, the Appellant was convicted of the lesser charge of **Simple Robbery** contrary to **Section 296(1)** of the **Penal Code**. He was sentenced to serve seven (7) years imprisonment. The Appellant was aggrieved by his sentence and has filed an appeal to this court.

In his appeal, the Appellant states that the sentence of seven (7) years imprisonment was harsh and excessive in the circumstances. He pleads that he is the sole breadwinner of his three siblings, his parents having passed away. He pleaded with the court to convert his sentence to non-custodial sentence. He states that he is a first offender and pleads to be given another chance in life. During the hearing of the appeal, the Appellant reiterated his plea for leniency. He urged the court to consider the circumstances of the case and reduce the custodial sentence that was imposed on him. Miss Matiru for the State opposed the appeal. She submitted that the Appellant attacked the complainant by stabbing her in the abdomen with a knife. The complainant was left for the dead. She had to undergo an operation to save her life. She was of the view that the sentence of seven (7) years imprisonment was lenient in the circumstances. It should therefore not be interfered with.

We have carefully considered the facts of this appeal. The Appellant is not appealing against his conviction. He is only appealing against sentence. In sentencing a convict, the trial court was exercising judicial discretion. This court can only interfere with such exercise of judicial discretion if it is established that the trial court applied the wrong principles of the law or sentenced the convict to serve an unlawful sentence or that the sentence imposed was either too lenient or too harsh taking into consideration the entire circumstances of the case. In the present appeal, we are unable to interfere with the exercise of discretion by the trial court in sentencing the Appellant. In our considered view, the sentence fitted the crime. In fact, the Appellant was lucky not to have been convicted of the more serious offence of **Robbery with Violence** contrary to **Section 296(2)** of the **Penal Code**. The Appellant stabbed the complainant in her abdomen during the robbery incident. The complainant lost consciousness. She was operated to save her life. She lost a lot of blood. It was by the grace of God that she lived to tell her story to the court. There are no mitigating circumstances that this court can consider to reduce the custodial sentence that was imposed on the Appellant.

In the premises therefore, the appeal on sentence lacks merit and is hereby dismissed. The conviction and the sentence of the trial court is hereby upheld. It is so ordered.

DATED AT NAIROBI THIS 6TH DAY OF DECEMBER 2013.

L. KIMARU

JUDGE

P. NYAMWEYA

JUDGE