



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO 140 OF 2013

TIMOTHY MUTEMI SYENGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Appeal from the original conviction and sentence by the Kyuso Principal Magistrate (B.M Mararo, PM) in Criminal Case No 67 of 2013.

JUDGEMENT

Timothy Mutemi Syengo, the appellant, two counts of stealing from the person contrary to section 279 (a) of the Penal Code and two alternative counts of handling stolen goods contrary to section 322 (1) and (2) of the Penal Code. It is alleged that on 17th May 2013 at Tseikuru Town in Tseikuru District of Kitui County he stole one black handbag valued at Kshs 800/=, black wallet valued at Kshs 100/=, one mobile phone make Nokia 1200 valued at Kshs 200/= and cash Kshs 2,300 the property of Marete Muthangya.

The alternative to that count reads that on the same date and place otherwise than in the course of stealing he dishonestly retained the same items.

Count 2 reads that on the same place and date as in count 1 he stole a black handbag valued at Kshs 1400/=, one mobile phone Itel silver in colour valued at Kshs 2800/=, one hot pot dark green in colour valued at Kshs 200/=, cash Kshs 10,000 and a red wallet valued at Kshs 200 the property of Christine Kalunda Muteti.

Alternatively he was charged with dishonestly handling the same items in count 2 otherwise than in the course of stealing.

The charges were read to the appellant on 20th May 2013 and the languages used are indicated as English, Kiswahili and Kikamba. The appellant denied all the charges and the case was fixed for mention on 3rd June 2013. The purpose of the mention is not indicated but perhaps it was for further orders.

On 3rd June 2013m the appellant was presented in court and he told the court as follows:

“I pray that charges be read afresh to me. I didn’t understand them in the first day”

The court gave a further mention date, 4th June 2013, for reading of the charges. On that day the charges were read afresh to the appellant and he pleaded guilty. The matter was adjourned to 6th June 2013 for giving of the facts and sentencing. On 6th June 2013 facts were read to the appellant who admitted they were correct and he asked the court for forgiveness stating that he was trying to get employment as he was frustrated. He was sentenced to serve 3 years jail on each count to run consecutively.

The appellant has prepared five grounds of appeal in his petition of appeal filed on 24th June 2013. He is claiming that:

- i. He is a first offender with no experience in court matters.
- ii. He was not given enough time to think of what I was charged with which led me to agree to the charges.
- iii. That he had been threatened with beating by police officers if he denied the charges.

Grounds number four and five are not grounds of appeal at all. He is asking the court to reduce the sentence or acquit him in number four and telling the court that he wishes to be present during trial in number five.

The state opposed the appeal. Learned state counsel Mr. Orwa submitted on the sentences provided under sections is 14 years and that the appellant was sentenced to three years which is not harsh or excessive.

I have given this case considerable attention. Convictions arising from a plea of guilty cannot be challenged except as to the extent or legality of the sentence (see section 348 CPC).

The appellant cannot claim that he was not given enough time in court. The record is clear that the plea was taken for the first time on 20th May 2013 when he pleaded not guilty. The matter was mentioned on 3rd June 2013 when he told the court that the charges be read afresh as he did not understand them the first time. Matter was adjourned to 4th June 2013 for plea taking afresh. He pleaded guilty and the matter was adjourned to 6th June 2013 for facts. He was convicted after confirming facts and was sentenced. It is not true therefore to state that he did not have enough time to think about the matter.

I find that the other grounds of appeal that he did not have experience with court procedure and that police threatened to beat him have no basis. On the sentence, it is not excessive. Three years imprisonment compared to 14 years imprisonment under sections 279 (a) and 322 (2) of the Penal Code is not excessive by any stretch of imagination.

This appeal has not merit and I hereby dismiss the same. The conviction and sentence of the lower court is hereby upheld. It is so ordered.

Dated, signed and delivered this 3rd day of December, 2013

S.N. MUTUKU

JUDGE