



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 239 OF 2010

EVANS MWANGI GICHOHIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From Original Conviction and Sentence in the Criminal Case No. 572 of 2009 of the Senior Resident Magistrate's Court at Taveta – C.N. Ndegwa, SRM)

JUDGMENT

Evans Mwangi Gichohi alias Cyrus Gichohi Mathenge (hereinafter referred to as the Appellant) was charged before the Senior Resident Magistrate's Court at Taveta, with the offence of :-

“Stealing motor cycle, contrary to Section 278A of the Penal Code”.

And the particulars thereof read that: -

“On the 16th day of November, 2009 at around 1.30 pm at Taveta Township in Taveta District within Coast Province stole a motor cycle Registration No. KMCE 589X make Flyboy 125-3 valued at Kshs.76,000/= the property of Jacob Mwangi”.

He was tried by Hon. C.N. Ndegwa, SRM, convicted and sentenced to serve **Six** years imprisonment. He is aggrieved by the conviction and sentence, hence this appeal.

At the hearing of the appeal, the Appellant relied on the grounds of the appeal and the submission he filed. However, he told the court that, he did not wish to pursue his appeal on conviction and proceeded to address the court on the issue of sentence alone. He submitted that he has ever since changed his character from the time he was imprisoned. That he is remorseful, and that what he did, he did it out of foolishness. That having now trained as a Carpenter with grade III certificate, and acquired a skill he will go and use it for gainful means. That he is an orphan and his siblings depend on him, and again he is married with one child.

In response, the State, represented by the Learned State Counsel Mr. Jamii opposed the appeal on Sentence. He submitted that the Appellant had one previous record of conviction hence not a first offender. That, the previous conviction relates to offence of **“stealing”** which is similar offence to the offence herein. That the maximum sentence for the offence herein is **seven (7)** years; therefore the sentence imposed is lenient and should be confirmed and the appeal be dismissed.

I have considered the appeal in total, the grounds thereof and the submissions by both parties. I have also considered the circumstances under which the offence was committed, that, the Appellant was known to PW2 Khalipha Kimanthi who gave him the motor-cycle on hire basis. That indeed PW2 Khalipha Kimanthi testified the Appellant used to hire the said motor-cycle and would return it back. That was also in the evidence of PW4 Joseph Nyamai. Thus, the Appellant was not a total stranger who went and found a motor-cycle and took it away without the knowledge of the owner. Although the Appellant alleges, he took the motor-cycle to repay his debt owed by PW2, I shall not go into that, as I am not dealing with the issue of conviction. Be it as it may, I have also considered that he was not a first offender. He has one previous conviction in a criminal case No. 378/08, over a similar offence and which the trial Magistrate properly and lawfully considered. However, the motor-cycle was recovered. The maximum sentence for the offence being seven (7) years, the sentence of six (6) years was a bit harsh. I shall in the interest of justice substitute the sentence imposed upon the Appellant herein of six (6) years imprisonment with the sentence of four (4) years imprisonment. The same shall take effect from the **29th March, 2010** when the Appellant was sentenced in the trial court.

Orders accordingly.

G.L. NZIOKA
JUDGE

7/3/2012

Signed, dated and delivered at Mombasa.

G.L. NZIOKA
JUDGE

7/3/2012