



IN THE HIGH COURT OF KENYA

REVISION CASE NO. 8 OF 2012

JOHN NDUMIA WANGUI.....APPELLANT

VERSUS

RULING ON REVISION

On 25th January 2012, at Kariobangi North Estate, the complainant, EUNICE ASWANI, had locked her house and gone to pay school fees for her children.

Also missing was KShs.1,800/-.

Members of the public pursued the applicant, and arrested him. The Television set was recovered, together with the remote control and the bed sheet. However, the cash was not recovered.

The trial court thereafter sentenced the applicant to a fine of KShs.100,000/; in default 3 years imprisonment.

On the respondent's part, Ms Mwanza, submitted that the sentence of 3 years imprisonment would have been lawful, as the maximum prescribed penalty is 7 years imprisonment.

Therefore, had the learned trial magistrate decided to hand down a custodial sentence of 3 years imprisonment, this court would have simply declared the said sentence as legal.

Of course, the said sentence is lawful of itself. However, when a trial court imposes the sentence of a fine, it then becomes incumbent on it to give due consideration to **section 28 of the Penal Code**. That section provides as follows;

then in the absence of express provisions relating to such fine in such law, the following provisions shall apply

any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act ordered by a court in respect of non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 of this Code or in respect of non-payment of a fine or of a sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale- "

Under the said prescribed scale, a person sentenced to a fine exceeding Kshs.50,000/- shall be sentenced to upto 12 months imprisonment.

It could be easy for this court to be tempted to simply substitute the default imprisonment of 3 years with one of 12 months.

Pausing at that stage, it then becomes tempting to move to the other end of the sentencing scale, and impose a nominal sentence.

Judicial Officers are called upon to carry out a detailed and delicate balancing act, with a view to achieving the ends of justice. In that exercise, the value of the subject matter is only one factor in the equation.

For instance, when an accused steals property of a low value, but uses violence on the victim, the court may be inclined to hand down a sentence reflecting the society's outrage.

And then again, they are offences which has no financial value e.g. defilement or rape. The legislature has taken the step of prescribing not only relatively long custodial sentences, but, in many instances, the statutes impose sentences which were either mandatory or those below which a convict cannot be sentenced.

A 19 year old man broke into a dwelling house. He stole the television set, a remote control and Kshs.1800/-. He carried away the television set and the remote control wrapped in a bed-sheet. The complainant is lucky that the applicant was seen when he was carrying away

the stolen items.

In my considered view, if the sentence was very light, it may send the wrong message to both the applicant and to other persons who may be inclined to do what he did.

ine of KShs.30,000/-. In default, he shall be imprisoned to six (6) months imprisonment.

It is so ordered.

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JUDGE