



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 524 of 2010

CHARLES MWANGI KIMUYA.....1<sup>ST</sup> APPELLANT

MICHAEL MWANGI GITAU .....2<sup>ND</sup> APPELLANT

ERICK MUTHENGI GITONGA .....3<sup>RD</sup> APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From original conviction and sentence in criminal case Number 1808 of 2009 in the Chief Magistrate's Court at Makadara – Mr. M. M. Muya (CM))*

JUDGEMENT

- 1. Charles Mwangi Kimuya, Michael Mwangi Gitau and Erick Muthengi Gitonga** hereinafter referred to as the appellants No. **1, 2 and 3** respectively were convicted for stealing a motor vehicle contrary to **Section 278A** of the **Penal Code**.
- The particulars were that on the 22<sup>nd</sup> day of April 2009 at Akiba Bellevue Estate, South C Industrial Area, within the Nairobi area, jointly with others not before the court, stole a motor vehicle registration number KBH 260 J make RAV 4 black in colour, of the value of Kshs.1.7 million the property of Moses Lutomiah Washiali. In the alternative the three appellants were charged with handling stolen goods contrary to **Section 322(2)** of the **Penal Code**.
- Upon conviction they were sentenced to five years in jail. They immediately filed their appeals but on 24<sup>th</sup> October 2012 when the appeal came up for hearing, they applied and were allowed to withdraw their appeals, and sought to be allowed to offer mitigation on the sentence.
- In mitigation the **1<sup>st</sup> appellant Charles Mwangi Kimuya** told the court that he was remorseful because of what he had done. That since April 2009 he has been in custody because he could not meet the bond terms, granted to him during the trial and his family had suffered since then. He also submitted that he had acquired skills while in prison, such as soap making, education on HIV and on the Bible. He urged the court to give him a chance to reintegrate in society. That he was jailed for five years for theft of motor vehicle which was later recovered, and that he had served 2 years and one month from the time the

sentence was passed to date.

5. The **2<sup>nd</sup> appellant Michael Mwangi Gitau**, submitted that he was arrested in April 2009 and was in custody throughout his trial. That he left three children and a wife on their own, and two of the children who were in secondary school were now attending school intermittently. This troubled him. He also submitted that he had also submitted that he had been taught how to mend shoes and in December 2012, he would attain grade III in this trade. He was remorseful because his mistakes had caused suffering to his family.

6. The **3<sup>rd</sup> appellant Erick Muthengi Gitonga**, submitted that he was in custody for 17 months during trial and had also served 25 months of the sentence. He submitted that he is now reformed and remorseful, and had learnt that there is nothing more precious than liberty. He further submitted that he had learnt many skills while in prison, and prayed to be given a chance to resume his duties as a father and husband.

7. The State opposed their application for the revision of sentence through the learned State Counsel Miss Kuruga, stating that the appellants were convicted for theft of motor vehicle, and sentenced to five years imprisonment. She urged that the law provides for up to seven years imprisonment, and that therefore the court was quite lenient in the sentence it imposed against them. The motor vehicle was stolen in an estate here in Nairobi and the appellants were arrested at the Kenya Tanzania border, about to exit the country with it. Miss Kuruga urged the court to uphold the sentence and dismiss the appeals.

8. Ordinarily an appellate court will not interfere with the sentence imposed by a trial court, unless it is found to be illegal or manifestly excessive. The appellants herein were sentenced to serve five (5) years imprisonment where the law provides for imprisonment for 7 years. This sentence was neither illegal nor am I persuaded that it was excessive or harsh, in view of the fact that the complainant's car worth Kshs.1.7 million, for which he had worked hard was taken from him without a second thought. It was recovered in a damaged state.

9. The purpose of a prison sentence is to provide to the offender punishment that is commensurate to the gravity of offence as atonement to the wrong done to the society, while at the same time allowing for the offenders rehabilitation. I am therefore pleased to note that each of the offenders acknowledges their mistake and state that they have learnt the errors of their ways. This means that they are well on their way to rehabilitation. It is however, necessary for each appellant to serve the remainder of their sentence as a reflection of the gravity of the offence.

Reasons wherefore, I decline to interfere with the sentence and dismiss the appeals.

**SIGNED DATED and DELIVERED** in open court this **28<sup>th</sup>** day of **November 2012**.

**L. A. ACHODE**  
**JUDGE**