



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 569 of 2009

JAMES MWAURA WANJIRUAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal against both conviction and sentence from original Cr. Cs. File No. 868/2009 judgement awarded at Limuru Law Court by R.M Hon (Mr. A.O OMINGA on 30th November 2009)

RULING

1. **James Mwaura Wanjiru**, the Appellant herein was convicted by A. O. Aminga (RM) on 30th November 2009. He had been charged with the offence of stealing from a locked motor vehicle contrary to **Section 279 (g)** of the **Penal Code**. There was also an alternative charge of handling stolen property contrary to **Section 322** of the **Penal Code**. The detailed particulars are set out in the charge sheet presented to the trial court on 30th July 2009. He pleaded not guilty to the two counts.
2. Upon conviction, the appellant was sentenced to five years imprisonment. Being aggrieved by the conviction and sentence he consequently lodged this appeal. He advanced 3 grounds in his petition of Appeal which can be summed up as follows:-
 - a) *That the trial magistrate was extremely harsh in both sentence and conviction*
 - b) *That the trial magistrate failed to note that the complainant stood to lose nothing since the exhibit was handed back to him*
 - c) *That the trial magistrate denied him the deserved right of a non custodial sentence as recommended by the probation officer.*
3. At the hearing of the appeal on 18th November 2012 the appellant withdrew his appeal on conviction and wished to mitigate on the sentence. He tendered written submissions in which he raised mitigating factors. He stated that he had since learnt his lesson having served 3 years of his sentence in prison since conviction. He submitted that he had since reformed and had acquired relevant skills. He had also learnt guidance and counseling skills which would see him reintegrate well in the society. He further stated that he was suffering from ulcers and needed treatment though he did not avail any evidentiary proof thereof.
4. Miss Wangele, learned state counsel, submitted that the prayers sought by the appellant were within the discretion of the court but urged the court to exercise this discretion judiciously considering the circumstances of the case.

5. She further urged that the appellant was convicted for theft from a locked motor vehicle contrary to **Section 279 (g)** of the **Penal Code** and sentenced to five years imprisonment when the law provided for 14 years. That the evidence against him was overwhelming, and the sentence imposed too lenient in the circumstances. Miss Wangele pointed out that a probation report produced in respect of the appellant at the time of sentencing was not favorable to him. She urged the court not to exercise its discretion in favor of the appellant and instead to dismiss the appeal.

6. I have considered the rival submissions before me together with the lower court record. The record shows that the trial court indeed considered the circumstances of the case and the appellant's mitigation before passing the sentence and was not persuaded. The appellant did not display any remorse for his actions and only demanded a non-custodial sentence.

7. The appellant broke into a locked motor vehicle and stole property worth Kshs.32,000/= from it. **Section 279 (g)** of the **Penal Code** carries a sentence of 14 years imprisonment upon conviction. Though the prosecution urged the court to treat the appellant as a first offender, I note from the trial court record that the appellant had previously been charged with a capital offence in **CM Cr. case No. 1424 of 2008** for which he was discharged after a psychiatric examination revealed that he suffered from a mental illness.

8. The probation report revealed that he was known to his area administration to be a habitual thief, and at the time was indifferent to the offence.

In the premise, I find that the sentence was neither excessive nor harsh, and there is no reason for me to interfere with the sentence imposed by the trial court.

I dismiss the appeal.

SIGNED DATED and **DELIVERED** in open court this **22nd** day of **November 2012**.

L. A. ACHODE
JUDGE