



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Appeal 8 of 2011

JOHN GACHUHI MAINAAPPELLANT

versus

REPUBLICRESPONDENT

(arising from the judgment of Hon. D.A. Orimba Senior Resident

Magistrate Kangema in Criminal Case No. 302 of 2010)

JUDGMENT

The appellant herein was charged with the offence of Robbery with Violence contrary to section 296(2) of the Penal Code.

The particulars of the offence was that on the night of 5th September 2010 at Kanyenyaini Trading Centre in Murang'a County jointly with others not before the court robbed Richard Kibichii Sambu one L.7 Motorola Mobile phone. One Samsung C3212 and Kshs. 600/- all valued at Ksh. 16,500/- and at or immediately before of after the time of such robbery wounded the said Richard Kibichii Sambu.

He was tried of the said offence but was convicted of simple robbery under section 296(1) of the Penal Code and sentenced to 7 years.

The Appellant therefore filed the present appeal on the 7 years sentence which he considered oppressive an excessive.

At the trial before us Mr. Gacheru represented the appelant and urged us to reduce the sentence.

He submitted that the maximum sentence under this section of the Penal code is 14 years and the appellant was given half of that. He submitted that he was a first offender and that the value of the stolen items was Kshs. 16,000/-.

He has urged us to consider a sentence of four years.

Mr. Kaigai for the state supported the appeal on the basis that taking into account the value of the items stolen and the fact that thee was recovery then the sentence was excessive.

We have considered he submissions of the counsels before us and the appellant's grounds of appeal to wit that the sentence was not meant for rehabilitation purposes and taking into account the fact that the appelant was a first offender.

From the evidence of P.W.1 the appellant was allegedly in a group of four people who known to

the witness. For him to have been alleged to have robbed somebody known to himself this in our mind shows that the appellant is just a common thief who can be rehabilitated to be a useful member of society.

We therefore allow the appeal on sentence set aside the same and substitute it with imprisonment for a period of two years.

Dated and delivered at Nyeri this 22nd day of November 2012.

J.K. SERGON
JUDGE

J. WAKIAGA
JUDGE

Miss Ngalyuka for the State.
John Gachuhi Maina

J. WAKIAGA
JUDGE