



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL CASE NO. 269 OF 2007

SAMUEL GIKANDI NJOKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal arising from the original conviction and sentence of L. W. Gitari Senior Principal Magistrate in the Chief Magistrate's Criminal Case No.2471 of 2007 delivered on 10th September 2007 at Nyeri)

JUDGMENT

SAMUEL GIKANDI NJOKI, the appellant herein, was convicted on his own plea of guilty to the offence of stealing from a locked motor vehicle contrary to *Section 279 (g)* of the Penal Code. The particulars of the offence are that on divers dates between 17th and 25th July 2007 at Kabaru forest Station in Nyeri District within Central Province, stole a car battery serial No. 0509953 and one jack all valued at Ksh.6,400 from motor vehicle registration No. G.K. X715 Mitsubishi pick up the property of Kabaru Forest Station and in order to commit such theft opened a locked motor vehicle with a wire. The Appellant was sentenced to serve 4 years in prison. The Appellant being dissatisfied with the sentence filed this appeal.

On appeal, the Appellant urged this court to interfere with the order on sentence with a view of reducing it on the basis that the sentence meted out was harsh and excessive. Mr. Makura, learned Senior State Counsel, opposed the appeal stating that the sentence was neither harsh nor excessive.

I have carefully re-examined the record and it is clear that the appellant properly pleaded guilty to the charge. This court has been called upon to interfere with a trial court's exercise of discretion on sentence. In **WANJEMA =VS= R [1971] E.A. 494 D**, Trevelyan J. restated the principles to be considered by the appellant before interfering with the trial court order on sentence as follows:

“An appellate court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factors or took into account some immaterial factors or acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

The record shows that before sentencing M/S L. Gitari, the learned Senior Principal Magistrate, considered the mitigating factors tendered by the Appellant, the fact that the appellant pleaded guilty, the

fact that the stolen items were recovered and the previous record of the Appellant. The learned Senior Principal Magistrate appears to have also called for a probation officer's Report before sentencing. The report revealed that the Appellant had previously been convicted for a similar offence. In fact he was on probation by the time of sentence. He had been placed on probation for two (2) years for the offence of stealing contrary to *Section 275* of the Penal Code on the 26th day of March 2007 vide **Nyeri S.P.M. CR. CASE NO. 386 OF 2007**. The trial magistrate cannot be faulted in the manner she handled the case. It has been argued on appeal that the sentence is harsh and excessive. I have looked at Section 279 of the Penal code and it is apparent the maximum sentence for such an offence is 14 years. The Appellant was not a first offender. The sentence of four (4) years imprisonment is not harsh nor excessive. In fact the Appellant was lucky, that the State did not press for the enhancement of the sentence. I would have gladly enhanced the sentence in view of the circumstances of this case.

In the end, I see no merit in the appeal. The same is ordered dismissed in its entirety.

Dated and delivered at Nyeri this 25th day of March 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Makura. N/A for Appellant.

J.K. SERGON
JUDGE