

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL CASE NO. 7 OF 2011

SOLOMON GATU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence by D. Orimba, Senior Resident Magistrate, in Kangema Senior Resident Magistrate's Criminal Case No.28 of 2011 delivered on 20th January 2011 at Kangema)

JUDGMENT

SOLOMON GATU, the appellant herein, was convicted on his own plea of guilty for the offence of stealing contrary to Section 275 of the Penal Code. The particulars of the offence are that on the 18th day of January 2011 at Kairo Market, within Muranga County, in Central Province, stole one keg pump valued at Kshs.30,000/=, the property of Virginia Wanjera. He was then sentenced to 18 months imprisonment. He is aggrieved hence he has appealed against sentence.

On appeal, the Appellant put forward the following grounds in his Memorandum of Appeal:

- 1. That the learned magistrate failed in law for failing to consider the circumstances surrounding the alleged offence and proceeding to deliver a harsh sentence in the circumstances.***
- 2. That the learned magistrate failed in law for failing to consider that the accused was a 1st offender and therefore sentencing him for 18 months imprisonment was harsh in the circumstances.***

A reading of the above grounds will reveal that the Appellant is complaining that the sentence meted out against him is harsh and excessive. Mr. Makura, the learned Senior State counsel, was of the view that the sentence was not harsh nor excessive. It is trite law that the appellate court will not normally interfere with the trial court's discretion on sentence unless it is shown that the court did not consider relevant factors or that the court considered extraneous factors or that the court gave a sentence which is manifestly excessive. The record herein shows that before sentencing, the trial magistrate considered the mitigating factors. He took into account the fact that the appellant pleaded guilty and the fact that he was a first offender. One fact which the trial court failed to take into account before sentencing is that the stolen item i.e. the keg pump was recovered and returned to the complainant. This fact alone entitles me to interfere with the order on sentence. The maximum sentence provided by law is three (3) years imprisonment. I think a sentence of 18 months imprisonment is a bit harsh for a first offender who pleaded guilty. The stolen property having been restored to the complainant should have influenced the court to pronounce a lenient sentence. I am convinced the appeal has merit. It is allowed. The sentence of 18 months is set aside and is substituted with 8 months imprisonment. The term to run from the date of sentence i.e. from 20th January 2011.

Dated and delivered at Nyeri this 20th day of May 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Macharia holding brief Nganga for Appellant and Mr. Makura for the State.