



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 209 OF 2009

C.G.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(An appeal from the judgment of the Principal Magistrate Court at Moyale in Criminal Case No. 315 of 2009 delivered on 24th September 2009)

JUDGMENT

The appellant was convicted by the Senior Resident Magistrate Court Moyale on 24th September 2009 on the charge of handling stolen goods contrary to section 322 (2) of the Penal Code. His co-accused Y.H. was convicted of the offence of stealing contrary to section 275 of the Penal Code. The appellant was sentenced to 6 years imprisonment and his co-accused was sentenced to 3 years probation. The appellant was at the time of his conviction 16 years old while his co-accused was 15 years old and pregnant. The appellant has appealed against the sentence. As stated in the case **Republic vs Jagani & Another** [2001] KLR 590 the circumstances under which the court will interfere with the sentence of the trial court are:-

“A court on appeal will only interfere with the discretion of a trial court in sentencing where the sentence was imposed against legal principles, or when relevant factors were not considered or irrelevant and or extraneous matters considered or normally where the sentence is manifestly excessive in view of the circumstances of any case.”

In this case the appellant as can be seen by the birth certificate he produced before court was 16 years old when he was convicted and sentenced by the lower court. Section 190 of the Children’s Act should have guided the lower court on the sentence to impose on the appellant. Section 190 (1) (2) and (3) provides as follows:-

“190 (1) No child shall be ordered to imprisonment or to be placed in a detention camp.

(2) No child shall be sentenced to death.

(3) No child under the age of ten years shall be ordered by a Children’s Court to be sent to rehabilitation school.”

That being so, the lower court should have been guided by the provisions of section 191 (1) of the Children’s Act in imposing sentence on the appellant. It is clear from the provisions of the Children’s Act that the sentence imposed by the trial court went contrary to that Act. It is for that reason I will interfere with the trial court’s sentence. I order that the sentence of C.G. by Moyale Principal Magistrate Court in Criminal Case No. 315 of 2009 be set aside and instead I hereby sentence the appellant to serve 3 years of probation.

Dated, signed and delivered at Meru this 19th day of May 2011.

**MARY KASANGO
JUDGE**