



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
CRIMINAL APPEAL NO. 178 OF 2010

REPUBLICRESPONDENT

VERSUS

JOYCE JEPKOECHAPPELLANT

(From original conviction and sentence in Criminal Case number 1816 of 2010 of the Principal Magistrate's Court at Winam)

JUDGMENT

The appellant herein was charged in the lower court with the offence of stealing things forming parts of a railway contrary to Section 279 (d) of the Penal Code, in that on the 17th day of November 2010 at Fortenan Railway Station in Kipkelion District within the Rift Valley Province at about 6:00 p.m. stole 11 Pandroll Clips, 43 screw spikes, 6 clips one fish plate, 2 dozen spikes area bridge, hook bolts, two rail stoppers and area bolts, all valued at Kshs. 50,000/= the property of Kenya Railway.

The appellant also faced an alternative charge of handling stolen goods contrary to Section 322 (2) of the penal code in that on the 17th day of November 2010 at Fortenan Railway Station in Kipkelion District within Rift Valley Province at about 6:00 p.m. otherwise then in the course of stealing dishonesty retained: 11 Pandroll clips, 43 screw spikes, 6 clips, one fish plate, 2 doz spikes, area bridge hook bolts, 2 rail stoppers and area bolts knowing or having reasons to believe them to be stolen goods.

The appellant appeared in court on 19th November 2010 when the charge was read over to her. The record shows that she pleaded guilty. The facts were outlined and she accepted the facts and then she was convicted and sentenced to serve two (2) years imprisonment with a right of appeal to the high court.

The appeal was filed on 2/12/2010 citing five grounds namely:-

- (i) That I pleaded guilty to the charge.
- (ii) That during conviction I was unwell and did not understand the consequences of my plea.
- (iii) That the learned trial magistrate erred in law and facts in failing to take into consideration the fact that I am a single mother of four (4) children, the last born aged eight (8) months when I was sentenced to serve a jail term of two years imprisonment unconditionally.
- (iv) That I am epileptic and my occasional faint (fits) have made my jail term hard and unsafe due to lack of special attention in prison. I pray for a non custodial sentence.
- (v) That I am regretful, remorseful and repentant.

When the matter came up for hearing of the appeal, this courts attention was drawn to supplementary grounds of appeal which had not been filed and for this reason they will not be considered in the assessment.

In her oral representation to court the appellant sought leniency on the side of the sentence.

The state submitted that on account of the appellant being remorseful, on account of her being a single mother with the youngest child being in her arms, and others outside the prison and since she has served two thirds of her sentence they had no objection to the sentence being reduced to one already served.

This court has given due consideration to the aforesaid facts as presented by both sides, and it is of the opinion that on account of a health problem, as well as the fact that the condition of the children not with the mother in prison is not known, it is in the best interest of justice that the appellant be released from prison. More so when the state has shown compassion and there were also recoveries made.

From the afore said reasons the conviction is confirmed since there was no appeal against it. As for the sentence, the appellant has been in prison since 19th November 2010, a period of ten (10) months and four (4) days. In this courts opinion that is sufficient punishment. The appeal against sentence allowed. The same is reduced to one already served. The appellant is ordered to be released from prison forthwith unless otherwise lawfully held.

Delivered, dated and Signed at Kisumu this 26TH day of September 2011

R. N. NAMBUYE
J U D G E

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