

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL APPEAL NO. 617 OF 2006

BONIFACE SILIMO KAKWERA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

On 2nd March, 2010 this appeal was consolidated with Criminal Appeal No. 616 of 2006. When the two appeals were called out for hearing on the said date, the learned counsel for the Republic put the two appellants on notice that the state will seek enhancement of the sentence imposed by the trial court. The two appellants had originally been charged with and tried for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code.

After a full trial they were found guilty and each sentenced to seven (7) years imprisonment. The 1st appellant Hussein Ahmed Hash withdrew his appeal but the learned counsel for the 2nd appellant asked for time to consult with her client.

When this appeal came before us on 4th October, 2011, the learned counsel for the appellant withdrew the appeal entirely but submitted that whereas the appellant was sentenced to (7) seven years imprisonment, the learned trial magistrate did not set the commencement date. It was her submission that the date the appellant was taken to court should have been the starting point.

The appellant having withdrawn the appeal in its entirety lacked the foundation upon which to address the court on any matter relating to his trial, including the commencement date of his sentence. Whatever the case, it is common knowledge that, any sentence imposed upon a convicted person commences on the date it is pronounced, and never on the date is someone arraigned in court. There is no justification why the appellant through counsel wants his sentence to start from the date he was first taken to court. We find no substance whatsoever in such a submission. It is our finding that the sentence of (7) seven years imprisonment commenced on 13th October, 2006 when the learned trial magistrate pronounced the same to the appellant. We decline therefore to interfere with the said sentence and the plea to that effect is hereby dismissed.

Orders accordingly.

Dated, signed and delivered at Nairobi this 1st day of September, 2011.

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A. MBOGHOLI MSAGHA
JUDGE

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F.A. OCHIENG
JUDGE