



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO. 181 OF 2009

LESIIT J.

SILAS MBAABU INYASIO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant SILAS MBAABU INYASIO was convicted of one count of stealing contrary to section 275 of the Penal Code. He had been charged with 4 other persons. All five accused in the lower court pleaded guilty to the charge and were sentenced to 1 year CSO except the Appellant who was sentenced to 3 months imprisonment without option of a time.

The Appellant was released by this court on a cash bail of Ksh.10,000/- this was one month after his imprisonment in the lower court. He has since jumped bail and was absent when his appeal was argued.

Ms Nelima for the Appellant urged one point very strongly which is that the learned trial magistrate erred when he passed a sentence against the Appellant which was different from that passed against the Respondent. Counsel relied on **Ngatia & Another Vs Republic (1987) KLR 498** where court held:

“4. The sentence meted out on the first Appellant was manifestly disparate in comparison with the sentence meted out on Stephen for the same offence”.

Counsel, M/s Nelima raised another issue to do with plea urging it was not understood by the Appellant. Counsel relied on **Wanjiru v. Republic [1975] EA. 5** where court held.

“(ii) The words “it is true” may not amount to a plea of guilty”

Mr. Mungai learned State Counsel opposed the appeal and urged the plea was properly taken and language used was an interpretation to a language the Appellant understood.

I have carefully analyzed and evaluated a fresh the proceedings before the lower court. The charge against the Appellant and co-accused was simple theft contrary to section 275 of Penal Code. It was

alleged they stole miraa with 3000/- the facts led by the prosecutions shows the five were arrested in the complainant shamba plucking miraa, and that miraa worth 3000/- was recovered from them. The facts described the offence charge. The Appellant and his co-accused understood the proceedings which were clear and simple. I am satisfied the plea of guilty to the charge was properly taken and the plea entered was correct and cannot be faulted.

The learned trial magistrate called for CSO reports. All came back favourable to all five accused before the lower court. Despite that, the learned trial magistrate sent the other four accused to a CSO term of 12 months. The Appellant was sentenced to imprisonment for 3 months.

Imposition of sentence is in the discretion of the court. The court has power to impose different sentences to different persons even where the persons are charged with the same offence. The only rider is that where there is disparity in sentencing the court must give good reasons on record why that was done in order to justify the disparity. Court's power must be exercised justifiably, not an arbitrarily or whimsically.

I have looked at the record of the court and find that the learned trial magistrate gave no reasons in the disparity sentences he imposed especially against the Appellant herein. The disparity was therefore not explained, substantiated and is therefore not justifiable. I will dismiss the appeal against conviction. On sentence, I allow the appeal, set aside the sentence of 15 months imprisonment and order a fine of 10,000/-

Since Appellant has deposited a cash bail of 1,000/- and has since jumped bail, I order the cash bail be forfeited to State as sufficient punishment in the offence. Those are the orders of this court.

DATED, SIGNED AND DELIVERED THIS 1ST DAY OF DECEMBER, 2011

J. LESIIT

JUDGE