



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Appeal 289 of 2008

DANSON GEORGE APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGEMENT

The Appellant herein **DANSON GEORGE** has appealed against his conviction and sentence by **HON. J.M. GANDANI**, the Senior Resident Magistrate sitting at Voi Law Courts. The Appellant had been charged with the offence of **STEALING CONTRARY TO SECTION 275 OF THE PENAL CODE**. ON 16th June 2008 the Appellant was arraigned before the court and the charges were read out to him. He pleaded guilty to the charge. The prosecutor **INSPECTOR GITHOGE** proceeded to read out the facts of the charge in compliance with S. 207(2) of the Criminal Procedure Code. The Appellant maintained his plea of guilty by stating

“Facts are true”

The learned magistrate listened to mitigation from the Appellant and thereafter sentenced him to serve four (4) years in prison. It is clear from the record that the trial magistrate followed the laid down procedure in recording the Appellant’s plea of guilty. The responses which the Appellant gave made it abundantly clear that he understood what the charges he was facing. I have perused the Appellant’s written submissions and I do note that he has not at any point repudiated his plea of guilty. He is basically asking for a more lenient sentence. Firstly the time of appeal is not the point at which one should offer mitigation. The Appellant did offer mitigation at his trial which mitigation the learned trial magistrate gave due consideration before imposing sentence. As pointed out by Mr. Onserio, learned State Counsel S. 279(d) provides

“(d) If the thing stolen is attached to or forms part of a railway The offender is liable to imprisonment for fourteen years”

The maximum sentence provided for is 14 years no doubt because the theft of railway parts serves to greatly inconvenience and endanger public transportation. The learned trial magistrate gave a sentence way below this maximum provided for. The facts (which the Appellant accepted) indicate that he and others were caught red-handed digging up railway cables. The stolen cables and their tools were exhibited in the lower court. In the circumstances I find that the sentence imposed was neither harsh nor excessive and I have no inclination to interfere with the same. This appeal fails in its entirety. I do uphold and confirm both the conviction as well as the four (4) year sentence imposed by the lower court.

Dated and Delivered at Mombasa this 25th day of May 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Onserio for State

Appellant in person

M. ODERO

JUDGE

25/05/2010