



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 146 & 145 of 2006

JOHN GICHOHI JOSHUA.....1ST APPELLANT

AMOS MUMERO SIGHANGI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An Appeal from original conviction and sentence in Nyahururu P.M.C.R.C.NO.230/2006
by Hon. G. A. M'masi, Ag. Principal Magistrate, dated 30th May, 2006)

JUDGMENT

The two appellants in this consolidated appeal have challenged their conviction and sentence for the offence of robbery contrary to **section 296(1) P.C.** (simple robbery) but when the appeal came up for hearing before us they withdrew the appeal on conviction. This judgment is therefore in relation to the sentence.

The two appellants and another were charged with two counts of **robbery with violence** contrary to **section 296(2)** of the **Penal Code**. It is alleged in the charge sheet that the three, armed with dangerous weapons, namely axes, *pangas* and *rungus*, robbed Kihu Karoki (the complainant in the first count) of cash Kshs.19,000/=, a mobile phone (Nokia 6310), two jackets, three Barclays Bank ATM cards and a national identity card. It is further alleged that at or immediately before or immediately after the time of the said robbery, the appellants and their accomplices threatened to use actual violence to the complainant.

On the same day (29th December, 2005), the three are also alleged to have robbed the complainant in the 2nd count (Paul Muchina Wanyagia) of a mobile phone (Motorolla V50) and used actual violence on the said Paul Muchina Wanyagia.

Finally, the three were charged with **assault causing actual bodily harm** contrary to **section 251** of the **Penal Code**. According to the charge sheet, the three are alleged to have assaulted John Wanjohi Gaturu on 29th December, 2005 occasioning him actual bodily harm. The court found that this charge was not proved and the appellants and their co-accused were acquitted. The appellants' co-accused was also acquitted on the two counts.

The first appellant was sentenced to five (5) years imprisonment in count 1 and four (4) years imprisonment in count 2 - the sentences to run concurrently. The 2nd appellant was sentenced to four (4) years imprisonment. This is what is before us.

The appellants aver in their grounds of appeal that their respective sentences were harsh

and excessive.

Learned counsel for the respondent opposed the appeal arguing that the maximum sentence being fourteen years, the sentences meted out were lenient.

Sentencing is an exercise of discretion and this court will not lightly interfere with a sentence unless it is shown to be illegal or excessive in the circumstances of the case. In our view the sentences

were neither excessive nor illegal. Certainly five (5) and four (4) years out of a possible fourteen (14) years can only be described as lenient for the appellants, considering what the complainant went through during the robbery not to mention the properties lost in the robbery. No sufficient grounds have been presented to us to warrant interference with the sentence.

The appeal fails and is dismissed.

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Dated, Signed and Delivered at Nakuru this 7th day of May, 2010

M. G. MUGO

JUDGE

W. OUKO

JUDGE