



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Appeal 219 of 2010

DANIEL JOSEPH KINYANJUI APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGEMENT

The Appellant DANIEL JOSEPH KINYANJUI has filed this appeal contesting his conviction and sentence by the learned Senior Resident Magistrate sitting at Mombasa Law Courts. The Appellant faced a charge of STEALING CONTRARY TO SECTION 275 OF THE PENAL CODE. He pleaded guilty to the offence when the charges were read out to him on 19th March 2010. MR. MAGOLO, counsel for the Appellants submits that the plea was not unequivocal. This is because the accused merely responded “It is true” I do not agree with learned counsel that the Appellant was merely commenting on the correctness of the charge. The record clearly indicates that the charge was read over and explained to the Appellant in Kiswahili a language he understood and he responded “It is true” meaning it is true that he stole. Even if I do grant that his response could have been interpreted in another way, the facts were read out to the Appellant as required by law. To the facts he responded Daniel Joseph Kinyanjui v Republic [2010] eKLR “The facts are correct” This is a clear statement that the Appellant accepted the correctness of the facts as read out to him. Mr. Magolo submits that the facts as read out did not disclose the offence of theft. With respect I do not agree. At page 2 line 2 the facts read as follows “The complainant suspected that the accused was the one who had stolen the money” The Appellant here is being accused of having stolen the money in question. His response that the facts are correct confirm that indeed he did steal the money. In my view the facts were clear and unambiguous. The Appellant gave a clear and unequivocal response and was convicted on his own plea of guilty. The fact that the Appellant in mitigation asked the court for forgiveness only serves to underscore his plea of guilty. Why seek forgiveness if he did not commit the offence? I find that the Appellant’s plea of guilty was properly recorded. I find no ambiguity either in the facts or said plea. His conviction was proper and I

do confirm the same.
With respect to sentence the Appellant was sentenced to serve three (3) years in prison which is the maximum sentence for this offence. MR. ONSERIO learned State Counsel did concede this appeal with respect to sentence. As a general rule the maximum sentence should be reserved for the worst possible manifestation of any offence. That can certainly not be said to have been the case here. The trial magistrate ought to have taken into account the fact that the Appellant pleaded guilty thereby saving the court from an unnecessary trial. In my view the 3 year maximum sentence was manifestly harsh and excessive in the circumstances. I therefore set aside this 3 year sentence and substitute a term of twelve (12) months imprisonment.

Dated and Delivered in Mombasa this 13th day of September 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Magolo for Appellant

Mr. Muteti for State

M. ODERO

JUDGE

13/09/2010