

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Criminal Appeal Case 324 of 2007

JOHN MBURU NJUGUNA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against Conviction and Sentence in Senior Resident Magistrate's Court at Kigumo

in Criminal Case No. 1668 of 2007 dated 14th August 2007 by S. M. Mokuu, Senior

Resident Magistrate)

JUDGEMENT

The Appellant, JOHN MBURU NJUGUNA, was charged, tried and convicted of one count of robbery contrary to *Section 296(1)* of the Penal Code. Upon conviction the Appellant was sentenced to seven years imprisonment. The Appellant was aggrieved by the conviction and sentence, hence this appeal.

When the appeal came up for hearing, the appellant elected to abandon the appeal on conviction but fight the appeal on sentence only. The appeal is one of mercy on the basis that the sentence of seven years imposed on him was manifestly harsh and excessive in all the circumstances of the case.

Of course, this Court has a right to interfere with sentence such as the one before it, if it is satisfied that in coming to that sentence, the trial court did not take into account a relevant factor, or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is manifestly harsh and excessive.

In this case there can be no doubt that the Appellant was a guilty party. The shoes robbed from the Complainant were recovered from the Appellant so soon after the robbery.

However it would appear that the learned magistrate did not at all consider the Appellant's mitigation. The other relevant thing that the learned Magistrate failed to take into account was that by the time he was sentencing the Appellant on 14th August, 2007, the Appellant had been in custody for over a year, the offence having been committed on 3rd August, 2006. Apart from not taking this relevant factor into account, I think that in all the circumstances of the case, the sentence of seven years imprisonment was manifestly harsh and excessive, considering further what was allegedly stolen.

Accordingly, I allow the appeal against sentence, set aside the sentence of seven years and substitute therefore a sentence of 3 ½ years imprisonment to run from 14th August, 2007, that being the date when the Appellant was convicted and sentenced. To that limited extent, the appeal succeeds.

Dated and delivered at Nyeri this 29th day of January 2009.

M. S. A. MAKHANDIA

JUDGE