

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 50 of 2007

LOISE WANJA NGUNJIRI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Conviction and Sentence in Senior Resident Magistrate's Court at Karatina in Criminal Case No. 837 of 2006 dated 7th November 2006 by Mrs. Kimemia –R.M.)

J U D G M E N T

The only issue in this Appeal is sentence. The Appellant was charged with the offence of stealing by servant contrary to section 281 of the Penal Code. She pleaded not guilty to the charge and his trial ensued subsequent thereto she was convicted. Upon conviction, the Appellant was sentenced to four years imprisonment. The appellant was aggrieved by the conviction and sentence and hence lodged the instant Appeal. At the hearing of the appeal, the appellant elected to abandon the appeal on conviction but proceeded to argue the appeal on sentence. Mr. Orinda learned Senior Principal State Counsel was not averse to the idea.

I am now asked to interfere with that sentence and I have the power to do so as this is the first Appeal. I think however that my interference would only be necessary if there was a clear breach of the law or principle since it was within the discretion of the trial court to assess the appropriate sentence in all the circumstances of the case.

Mr. Orinda, did not oppose the appeal on sentence. Counsel in fact submitted that the conviction of the appellant was not safe. That the charge was at variance with the evidence. It was counsel's view that the Appellant having been a first offender, the sentence imposed was harsh and manifestly excessive. Counsel therefore urged me to use my discretion and impose a more appropriate sentence.

I am of the view that considering that the Appellant was a first offender, the sentence imposed was harsh and manifestly excessive. There was no justification for such sentence. The Appellant was not a serial Criminal as to attract such a sentence. The learned trial magistrate notes on sentence in this matter are sketchy. Sentencing as already stated is a matter for the discretion of the court. The discretion must however be exercised judicially and not capriciously. The sentencing court must be guided by evidence and sound legal principles. The court must take into account all relevant factors and eschew all extraneous or irrelevant factors. Had the trial court approached sentencing in terms aforesaid, the sentence would perhaps have been different. Having reconsidered the facts and circumstances of this case, I would vary the sentences imposed in terms as follows. I commute the appellant's sentence to the term of eight months she had served before she was released on bail pending appeal. The consequence of this order is that the appellant is set at liberty forthwith.

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

M. S. A. MAKHANDIA

JUDGE