

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 156 of 2007

NICHOLAS KAULAAPPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(From the original Mombasa criminal case no. 2785 of 2007)

JUDGEMENT

The Appellant in this case one Nicholas Kaula has filed this first appeal against his sentence. The Appellant made it clear in his submission to the court that he was only appealing against the three (3) year sentence imposed upon him. He did not wish to appeal against his conviction. Mr. Monda State Counsel did not oppose the appeal but left it to the court.

A perusal of the record from the lower court reveals that the appellant had been charged on a first count shop breaking and stealing C/s. 306(a) of the Penal Code and on an alternative count of Handling Stolen Property C/s 322 (2) Penal Code. The Appellant denied the first count but pleaded guilty to the alternative charge of Handling. As required the facts were read out to the Appellant and he maintained his plea of guilty. The trial magistrate then proceeded to convict the appellant on the alternative charge and after hearing mitigation sentenced the appellant to serve three (3) years imprisonment.

From this record it is clear that the trial court did follow the correct procedure to the accused. The charges were properly read out to the accused and upon his plead of guilty to the alternative charge the facts were also clearly read out to him. The language was English with Kiswahili translation which the Appellant clearly understood as he responded at all stages.

As stated earlier the Appellant has no quarrel with his conviction and he concedes in his submission to this court that he did indeed plead guilty which he says he did to save the courts time. Whilst this court is mindful of the fact that sentence lies at the discretion of the trial magistrate there do exist certain principles of sentencing. In addition there do exist certain cases where leniency is called for and indeed is expected. The offence of which the appellant pleaded guilty was that of Handling C/s. 322 (2) Penal code.

S. 322 (2) of the Penal Code provides that:-

“(2) A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term not exceeding fourteen years”.

This Section clearly provides the trial court with a wide discretion as regards sentencing. There is no mandatory sentence imposed. The factors which would call for leniency in this case are firstly the fact that the appellant accepted his offence and did not seek to waste the courts time by way of a full trial. Secondly the value of the items handled was Kshs. 52,700/- a reasonable sum but not in any way exorbitant. The court prosecutor did confirm that the Appellant was a first offender and was not a habitual or repeat offender. The aim of the court in such case would be to punish the offender to enable him see the error of his ways but at the same time to afford the offender an opportunity to rehabilitate himself. The trial Magistrate appears not to have addressed her mind to some of the sentencing alternatives such as a fine, community service and/or probation. As the appellant has pointed out in his

written submissions to court to put him into custody would only expose the Appellant to influence from hardcore criminals which may in the long run be detrimental.

Having considered the facts of the case and the submissions of the Appellant and taking into account all circumstances, this court feels that 3 year custodial sentence was in the circumstances excessive. Therefore this court allows the Appellants' appeal against his sentence and reduces the sentence to fifteen (15) months in prison.

Dated and delivered this 28th day of May 2009

M. ODERO

JUDGE

Read in open court

Mrs. Umara holding brief for Mr. Monda for State

Appellant in person.