



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NYERI**

**Criminal Appeal 261 & 33 of 2007**

**PAUL NJUGUNA KARANJA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***CONSOLIDATED WITH***

**HIGH COURT CRIMINAL APPEAL NO. 33 OF 2007**

**SAMUEL MWANGI KARANJA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Appeal from original Conviction and Sentence in the Senior Resident Magistrate's Court at Kigumo in Criminal case no. 1696 of 2006 dated 7<sup>th</sup> March 2007 by Mr. S. M. Mokuu- SRM)***

## **J U D G M E N T**

The two appeals have been consolidated for ease of hearing and as they arose from the same trial in the subordinate court.

The appellants were jointly charged with the offence of robbery contrary to section 296(1) of the Penal Code. The 2<sup>nd</sup> appellant also faced one count of Bar breaking and stealing contrary to section 306(a) of the penal code as well as the alternative count of Handling stolen property contrary to section 322(2) of the Penal Code. They pleaded not guilty to the charges and they were thereafter tried. At the end of the trial, the appellants were convicted of the main count and were thereafter sentenced to 6 years imprisonment each. The 2<sup>nd</sup> appellant was again sentenced to 3 years imprisonment in respect of the 2<sup>nd</sup> count. His sentence was however ordered to run concurrently.

The appellants were aggrieved by the conviction and sentence imposed and hence preferred these appeals. In their home drawn petitions of appeal, the appellants say that the learned magistrate erred in

law and fact in convicting them on insufficient evidence, that their identification was doubtful and that the sentences imposed were manifestly harsh and excessive.

When the appeals came up for hearing, the appellants chose to abandon the appeals on conviction. Instead they now wished to pursue the appeals on sentence only. They all submitted that the sentences imposed were manifestly harsh and excessive. **Mr. Orinda**, Principal State Counsel contended in agreement that the sentences imposed were indeed harsh and excessive though legal.

The main offence for which the appellants were convicted of carries a maximum sentence of 14 years imprisonment. The sentence that the learned magistrate imposed was 6 years imprisonment though the appellants were first offenders. No doubt the sentence imposed has caused me grave concern. I wish to draw the attention of trial courts to the caution sounded by the court of appeal regarding meting out excessive sentences in the case of **George Otieno Oloo v/s Republic KSM Criminal appeal No. 137 of 2004**. The court stated:

**“..... Apart from the statutory *Maxima*, for example, those on the sentencing of persons convicted of robbery with violence contrary to section 296 (2) of the Penal Code and murder, the appropriate sentence is a matter for the discretion of the sentencing magistrate or judge. This being the case, the magistrate and the judge must act judicially and not to award sentences capriciously. Of late, we have noted a trend where maximum and manifestly harsh sentences of imprisonment have been imposed on convicted persons on wrong factual basis. Though it is the duty of the court to protect the public and punish and deter the criminal, the trial courts must adopt a uniformity of approach.....”**

The sentencing notes of the trial magistrate do not at all justify why the sentence of 6 years imprisonment was preferred. Much as the offence committed was serious, it did not however justify the sentence imposed, bearing in mind that the appellant were first offenders.

Anyway, I have heard the appellants on their plea for reduction of the sentence and the learned Principal state counsel, **Mr. Orinda's** input. For my part I think that although the offences committed were serious in all the circumstances I however I am of the view that the sentence meted out was harsh and excessive. I would therefore allow the appeal, set aside that sentence and substitute it with the period so far served. In other words I commute the appellants' imprisonment to the term so far served with the consequence that the appellants shall forthwith be set free unless otherwise lawfully held.

*Dated and delivered at Nyeri this 30<sup>th</sup> day of November 2009*

**M. S .A .MAKHANDIA**

**JUDGE**