

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
NAIROBI (NAIROBI LAW COURTS)
CRIMINAL APPEAL 255 OF 2007

ABBAS HUSSEIN BHAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal case No. 3351 of 2006 of the Chief Magistrate's Court at Makadara – Mr. K. Muneeni, S.R.M.)

JUDGMENT

ABBAS GUSSEIN BHAI, the appellant was charged before the subordinate court with stealing by servant contrary to section 281 of the Penal Code. The particulars of offence were that between 4/5/2006 and 6th June 2006 at CHEMIGAS LTD Industrial Area within Nairobi Area Province being an employee of CHEMIGAS LTD employed as a clerk stole Kshs.274,916/= the property of the said M/S CHEMIGAS LTD. He was recorded as having pleaded guilty. He was sentenced to 5 years imprisonment.

He has now appealed to this court against the sentence. The learned State Counsel, Mrs. Gakobo, opposed the appeal. Counsel submitted that the sentence imposed was legal, as the maximum sentence was 7 years imprisonment. Counsel emphasized that the stolen money was not recovered.

Indeed the sentence is legal as the maximum sentence for the offence is 7 years imprisonment. Sentencing is essentially the discretion of the trial court and an appellate court will be slow to interfere with the exercise of that discretion. In our present case, I will interfere with the sentence imposed by the subordinate court because the learned magistrate did not take into account the fact that the appellant pleaded guilty and did not waste the court's time. In any event, a sentence of 5 years imprisonment for a first offender for an offence whose maximum sentence is 7 years imprisonment is excessive. I will reduce the sentence to three years imprisonment.

Consequently, I allow the appeal on sentence, set aside the sentence imposed and order that the appellant will serve 3 (three) years imprisonment from the date on which he was sentenced by the subordinate court.

Dated and delivered at Nairobi this 30th day of April 2008.

George Dulu

Judge

In the presence of –

Appellant in person

Mrs. Gakobo for State – absent

Mwangi – court clerk