

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 276 OF 2006

(From Original Conviction and Sentence in Criminal Case No. 375 of 2006 of the Senior

Resident Magistrate's Court Taveta J.M. Githaiga Esq, SRM)

JOHN MAINA KUNGU APPELLANT

- Versus -

REPUBLIC RESPONDENT

J U D G M E N T

The appellant, John Maina Kungu, was charged in the Senior Resident Magistrate's Court, Taveta, with theft of a bicycle contrary to Section 275 of the Penal Code. He was convicted on his own plea of guilty and sentenced to five years imprisonment. He appealed to this court against sentence.

Out of the three grounds of appeal preferred to this court, only one ground makes sense. In that ground, the appellant says that he was drunk at the time he stole, and did not know that he had stolen as he lacked the capacity to know which bicycle was his. He reiterated before this court that he had taken some beer and appealed for leniency. He also told the court that he was 64 years old.

Mr. Onserio for the Republic opposed the appeal but drew the court's attention to the sentence as it was in excess of what is in law provided for. He urged the court to interfere with the sentence in order to conform with the law.

Section 275 of the Penal Code under which the accused was charged and convicted prescribes a maximum sentence of three years imprisonment. The term of imprisonment for 5 five years imposed on the appellant by the learned trial magistrate did not conform with the law and was patently illegal.

The appellant is 64 years old. He has been convicted previously of a similar offence and sentenced to three years imprisonment. He does not seem to have learned any lesson. At his age, I doubt that he will ever learn.

I note that he was sentenced on 28th June, 2006. If he were sentenced to the maximum three years as by law provided, he will be out of jail in another month's time or so. He has almost done that time.

I accordingly sentence him to imprisonment for the term he has served todate and order his immediate release unless he is otherwise lawfully held.

Dated and delivered at Mombasa this 27th day of May, 2008.

L. NJAGI

JUDGE

