REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 264 of 2007

ALI ISMAEL ……. APPELLANT

V E R S U S

REPUBLIC……. RESPONDENT

J U D G M E N T

ALI ISMAEL, the appellant, was charged before the subordinate court with preparation to commit a felony contrary to Section 308 (2) of the Penal Code. The particulars of offence were that on 22nd December, 2006 at Korogocho slums in Kariobangi in Nairobi within Nairobi Area, jointly with others not before court not being at their place of abode had articles for use in the course of or in connection with robbery namely knives. He was recorded as having pleaded guilty. He was sentenced to serve 4 years imprisonment. He therefore appealed to this court against the sentence. His petition of appeal filed on 7th May, 2007 he appeared also to challenge his conviction, by stating that the magistrate relied on information from an unreliable informer.

The learned State Counsel, Mrs. Obuo, opposed the appeal. Counsel contended that the maximum sentence for the offence was 14 years imprisonment. Counsel submitted that this court would call for a Probation Officer's report.

I have considered the appeal and submissions of the appellant as well as the submissions of the State Counsel. In my view, the plea of guilt was properly taken. The charge was read to the appellant in Swahili. He admitted the same. The facts were summarized, and he also admitted the facts. That was when he was convicted on his own plea of guilty. In my view, a proper plea of guilty was recorded, and the conviction that followed it was also proper on the plea of guilty was unequivocal.

On sentence, the maximum sentence for the offence is 14 years imprisonment. The appellant was sentenced to serve 4 years imprisonment. Sentencing is essentially an exercise of discretion by the sentencing court. An appellate court will be slow to interfere with that exercise of discretion, unless it is shown that the sentencing court took into account an irrelevant factor, or that it failed to take into account a relevant factor, or that it applied a wrong principle or short of these that the sentence is so harsh and excessive that the application of a wrong principle must be inferred.

Having considered the circumstances of this case, and I find no wrong principle applied by the learned magistrate. The subordinate court took into account the fact that the appellant was a first offender, and the offence is common. Indeed, the offence is also serious at it militates against the peace and safety of people and property in Kenya. In my view, the sentence is neither harsh nor excessive.

Consequently, I dismiss the appeal and uphold both the conviction and sentence.

Dated and delivered at Nairobi this 7th day of May, 2008.

G.A. Dulu

Judge

In the presence of –

Appellant in person

Mrs Obuo for State – absent

Mwangi Court Clerk.