



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Revision 14 of 2008

STEPHEN MWOVE MUSYOKA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case No. 115 of 2008 of the Chief Magistrate's Court at Kibera by Mr.

Maundu – (SRM)

RULING

STEPHEN MWOVE MUSYOKA (the applicant) has made an application under section 362 Criminal Procedure Code. Appellant stated that he was charged for the offence of stealing and upon conviction, he was sentenced to 5(five) years imprisonment without an option of a fine. He now requests the court to impose a non-custodial sentence or revise, alter or reverse the sentence.

The applicant had been charged along with **JUSTUS MUVENGE KINYILI**(who was the 2nd accused) in Criminal Case No. 115 of 2008 (Kibera) for the offence of stealing contrary to section 275 Penal Code. The particulars of the offence being that on 4th December, 2007 at Adams Arcade in Nairobi Area, they jointly stole 15 golden watches, 10 pieces of golden bracelets, 10 gold chains, 9 golden rings, 12 pairs of golden ear-rings, one motorolla V3 phone and two pairs of leather shoes, all valued at Kshs 4,000,000/- the property of **JULIANA KITOLOLO**.

Applicant pleaded guilty to the charge which the court record shows was read to him in Kiswahili. The facts were then stated and appellant admitted that the facts were correct and responded this:-

“It is true we stole these items and the items mentioned were recovered from me.”

That plea was unequivocal The applicant then gave his plea in mitigation which was duly considered by the trial magistrate Mr C.M. Maundu and to was sentenced to serve 5 years imprisonment.

Now under section 275 Penal Code which provides for general punishment for theft:-

“Any person who steals anything capable of being stolen, is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or nature of the thing stolen some other punishment is provided, to imprisonment for THREE years.”

Obviously then the sentence of 5 years is not only manifestly excessive, it is also illegal – the maximum sentence for stealing under section 275 is three years.

I have considered the circumstances of the case applicant was left inside the complainant's house being a house servant and he stole from that employer. It is probably with this in mind that the learned trial magistrate sentenced him to 5 years basing it on a charge of theft by servant contrary to section 281 Penal Code which attracts a seven year jail term. However applicant was not charged under section 281 Penal Code, but under Section 275 Penal Code. Subsequently I must interfere with the sentence. Some of the stolen items were recovered and I bear this in mind while considering the appropriate sentence. Applicant was indicated as being a first offender and his mitigation was that he stole the items because complainant had not paid him for six months, so he intended to sell the items to settle the debts he had incurred.

Under the circumstances then, I think a maximum sentence would be rather harsh and punishable and I would thus revise that sentence imposed by setting aside the 5 year sentence and substituting it with a 2 year sentence which will run from the date of conviction.

Delivered and dated this 13th day of June, 2008 at Nairobi.

H.A. OMONDI

JUDGE.