

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 263 of 2005

JOHN NJOGU KIMANI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Conviction and Sentence in the Senior Principal Magistrate's Court at Murang'a in Criminal Case No. 1902 of 2005 by G. K. Mwaura – P.M.)

J U D G M E N T

The appellant was convicted on his own plea of guilty to a charge of stealing by servant contrary to section 281 of the Penal Code on 7th October 2005 before the Principal Magistrate's Court at Murang'a and sentenced to 6 years imprisonment.

The appellant now appeals to this court on sentence only. He claims that the sentence imposed on him as aforesaid was harsh and manifestly excessive in view of the fact that he pleaded guilty to the charge, was a first offender, that he was a man of advanced age of 70 years and finally that he suffers from diabetes that is worsening by the day as prison authorities are not in a position to provide him with the medicine for his condition for free. His health might deteriorate therefore if the sentence imposed is fully served. He prayed for its reduction.

Mr. Orinda, learned Principal State Counsel who appeared for the respondent neither opposed nor supported the appeal on sentence. He opted to leave the entire matter to court.

The appellant stole Kshs.48,870/= belonging to his employer. He abused the faith and trust that his employer had placed in him. However the appellant is an old man of over 70 years. He pleaded guilty to the charge and thereby saved the trial court valuable judicial time. That should have counted for something. The appellant appears to be a victim of complicated diabetes mellitus going by what is on record and it appears that the prison is unable to meet the prescribed drugs. It does appear that the appellant has been relying on donations from Catholic Mission Mathari hospital for the medical supplies but now the supply has dried up.

The offence with which the appellant was charged carries a maximum sentence of 7 years. The appellant was however sentenced to 6 years. Taking into consideration all the facts and circumstances of the case, I am of the view that the sentence imposed by the trial court was harsh and manifestly excessive. In the result my interference of it is therefore justified. I reduce the sentence to the term so far served with the consequence that the appellant should be set loose forthwith unless otherwise lawfully held. It is so ordered.

Dated and delivered at Nyeri this 10th day of June 2008

M. S. A. MAKHANDIA

JUDGE