REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL 55 OF 2006

SAMUEL DANSON LESHAO .....…… APPELLANT

VERSUS

REPUBLIC ……...……. RESPONDENT

(Appeal from the original Conviction and sentence in the Senior Resident Magistrate's Court at Nanyuki in Criminal Case No.1064 of 2005 by

R.N. MURIUKI – S.R.M.)

J U D G M E N T

The appellant herein, **Samuel Danson Leshao** was charged with Robber contrary to *section 296 (1)* of the Penal Code of which the appellant pleaded guilty. The learned Magistrate having considered all the circumstance of the case sentenced the appellant to five (5) years imprisonment.

The appellant now comes before this court appealing against sentence only.

The facts of the case as admitted by the appellant were that on 11th May, 2005 along the Nanyuki Ngare Ngiro road, the complainant was riding his bicycle towards Endana. He came across the appellant in the company of two other persons. The appellant blocked his path. The complainant fell from his bicycle. The appellant and his colleagues that emptied his pocket and took his Kshs.1,100/=. The following day on his way to report the incident to the police station, he found the appellant in the same Matatu. He sent for Administration Police who came and arrested the appellant. He was then taken to the police station and charged. The money was however not recovered.

The appellant being aggrieved by the sentence and has pleaded for its reduction on the grounds that the sentence imposed was harsh and excessive and that he was remorseful.

On his part, **Mr. Orinda,** learned Principal State Counsel opted to leave the matter to court.

The appellate court as this one, will only interfere with the sentence imposed by the trial court if it is shown to be unlawful and illegal or if it is manifestly harsh and excessive as to amount to a miscarriage of

justice. **See Ogola S/O Owuora V Republic (1954) 19 EACA 270, Nilson V Republic (1970) EA 599 and Wanjema V Republic (1971) EA.493**. The offence for which the appellant ought to have been charged with from the facts as narrated above should have been robbery with violence contrary to *section 296 (2)* of the Penal Code. In robbing the complainant, the appellant was in the company of two other persons. That is one of the three ingredients of robbery with violence. All that the prosecution is required to prove is only one of them. In this case, the appellant was in the company of one or more persons when robbing the complainant. He ought therefore to have been charged with the capital offence of Robbery with violence. He is therefore lucky that he was charged with simple robbery.

Be that as it may, the offence for which the appellant was convicted carries a maximum sentence of fourteen years. The appellant was however sentenced to a mere five years. Considering that the appellant would have been equally guilty for the more serious offence of capital robbery, I do not consider the sentence imposed as being manifestly harsh and excessive.

In my view, the sentence was appropriate in the circumstances of the case. This was a legal sentence which was neither harsh nor excessive. I find therefore no reason to warrant my interfering with this sentence. Accordingly, this appeal against sentence is hereby dismissed.

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

M.S.A MAKHANDIA

JUDGE