



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

Criminal Appeal 560 of 2007

REBECCA BISANJU OMONYAAPPELLANT

-AND-

REPUBLICRESPONDENT

(An appeal from sentence delivered by Resident Magistrate Mr. A. Ademba on 19th September, 2007 in Criminal Case No. 6085/06 at Makadara Law Courts)

JUDGMENT

The appellant was charged with theft by servant contrary to s. 281 of the Penal Code (Cap. 63, Laws of Kenya). The particulars were that she, on 13th September, 2006 at Umoja Estate in Nairobi, being a house-girl to *Susan Kaburia*, stole one Sony 14-inch coloured television, a Panasonic radio, and a suitcase containing assorted clothes all valued at Kshs. 20,500/-, the property of the said *Susan Kaburia* which came into her possession by virtue of her employment.

On the first occasion of plea-taking, the appellant pleaded guilty to the charge itself, but denied the facts as stated by the prosecution, leading to a plea of not guilty being entered. She later pleaded guilty when the charge was again read to her, and she admitted that the facts then read out were true, after which a plea of guilty was now entered.

The facts as read out were that the accused was employed by the complainant as a house-girl. On 13th September, 2006 the complainant left her in the house at Umoja Estate, caring for the complainant's children, as she went to her place of work. At 1.30 p.m. the complainant was called by her brother who informed her that the appellant was not in the house, and several items, including a television, were missing. The complainant reported the matter at the police station. One month-and-a-half later, the appellant was spotted by the complainant at the City centre; she raised alarm, and the appellant was arrested by Police officers on patrol. The appellant was escorted to the Police station, but no recovery was made.

The trial Court heard the appellant's statement in mitigation, and recorded the fact that she had in the past been convicted in Criminal Case No. 3529 of 2006. A sentence of two years imprisonment was handed down; and from this the appellant appealed, contending as follows:

- (i) that she is a first offender;
- (ii) that she be subjected to a non-custodial sentence;

(iii) that she promises to be a law-abiding citizen.

At the hearing of the appeal, the appellant urged that she is an orphan and has children to care for. She also said she had not been paid by her employer for the six-month period leading to the theft incident.

Learned counsel **Mrs. Gakobo** submitted that the sentence imposed on the appellant was neither harsh nor excessive, since the trial Court had taken account of her past antecedent, and especially considering that she was subjected to a two-year term of imprisonment, out of a possible maximum of seven years. The Court had noted that the appellant was not a first offender, and the property she had been accused of stealing had not been recovered.

I am in agreement with learned counsel, and I hold that the sentence imposed on her was in every respect, fair. I, thus, dismiss the appeal, and affirm sentence as meted out by the trial Court.

Orders accordingly.

DATED and DELIVERED this 24th day of November, 2008.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Huka

For the Respondent: Mrs Gakobo

Appellant in person