

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Criminal Appeal 63 of 2008

SALIM MWAU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

1. Salim Mwau was charged with the offence of stealing from a locked motor-vehicle contrary to section 279 (g) of the Penal Code in Kilungu RM'S Court Criminal Case Number 98/2007. The particulars of offence were that on the night of 30th March 2007 at Kyandue Market, Kitaingo Location in Makueni District, jointly with another not before the court he stole one pair of pliers from a locked motor-vehicle reg. No. KXZ 575 Datsun Pick-Up and that to do so he had to open the door of the said motor-vehicle, the property of Edward Mutungi Mwova.
2. The Appellant admitted the offence and was convicted accordingly. He was sentenced to serve 2 years at Nairobi Boys Hostel, he, then, being a minor. He escaped from the Hostel and on 1/10/2007 the trial court sentenced him to serve 3 years in prison. I note that at the time of sentence he was 17 ½ years. He now prays for reduction of the sentence.
3. I also note that before me is H.C.CR. Appeal No. 64/2008 where the Appellant is the same and where he was sentenced to serve another 3 years in prison for the offences of housebreaking contrary to section 304(1) and stealing therein contrary to section 279 (b) of the Penal Code. It is not an issue presently but I raise it only because of the effect if I interfere with the present sentence.
4. In this particular case, although alive to the fact that the accused person was a minor when the offence was committed, I do not understand the Children's Act to be blind to the unique situation of a minor who is placed in a hostel, escapes and commits another offence.
5. As I understand it, a sentence lawfully imposed can only be interfered with if the trial magistrate "overlooked some material factor, acted on the wrong principle or the sentence is manifestly excessive in the circumstances of the case" – per Trevelyan J. In Wanyema vs R (1971) E.A. 493 at 494. None of these matters have been brought to my attention and the Appeal fails. In fact the sentence is far lenient considering the Appellant's predisposition to crime.
6. The Appeal is dismissed.
7. Orders accordingly.

Dated and delivered at Machakos this 16th day of December 2008.

ISAAC LENAOLA

JUDGE

In presence of: **Mr O'Mirera for Republic**

Appellant

ISAAC LENAOLA

JUDGE