

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 252 of 2004

(From original conviction and sentence in Criminal Case Number 1613 of 2005 of the Chief Magistrate's Court at Makadara –Miss Karani, S.R.M)

JACKSON KIOKO MALUMBU APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in Criminal Case Number 1613 of 2005 of the Chief Magistrate's Court at Makadara –Miss Karani, S.R.M)

JUDGMENT

The only issue in this Appeal is sentence. The Appellant was charged with the offence of selling articles bearing designs in imitation of currency contrary to Section 376 of the Penal Code as well as having possession papers for forgery contrary to Section 367 (a) of the Penal Code. He pleaded guilty to the charges and was convicted on the plea. He also accepted unequivocally the facts put forward by the Prosecution which were brief. Upon conviction, the Appellant was sentenced to six month imprisonment in respect of count one and 5 years imprisonment in respect of count two. Both sentences were ordered to run concurrently. The Appellant was aggrieved by the conviction and sentence and hence lodged the instant Appeal limited to sentence only.

I am now asked to interfere with that sentence and I have the power to do so as this is the first Appeal. I think however that my interference would only be necessary if there was a clear breach of the law or principle since it was within the discretion of the trial Court to assess the appropriate sentence in all the circumstances of the case.

The Appellant faults the sentence imposed on the grounds that the trial Court did not consider his plea of leniency and that the sentence of 6 months and 5 years imprisonment respectively for a first offender was manifestly harsh and wrong in principle.

Mr. Makura, Learned State Counsel appeared for the state and did not oppose the Appeal on sentence. Counsel submitted that the Appellant pleaded guilty to the two counts. The first count carries a maximum jail term of six months. The Appellant was sentenced to the maximum jail term. The second count attracts a maximum sentence of seven years. The Appellant was however sentenced to five years imprisonment. It was Counsel's view that the Appellant having been a first offender and having pleaded guilty to the charges and thereby saving Court its valuable time, the sentence imposed was harsh and excessive. Counsel therefore urged me to use my discretion and impose a more appropriate sentence.

I am of the view that considering that the Appellant was a first offender and pleaded guilty to the charges and thereby saved the Court valuable time, the sentences imposed were harsh and manifestly excessive. The sentence imposed in the first count was the maximum. There was no justification. The Appellant was not a serial Criminal as to attract a maximum jail term. The sentence imposed on second count though lawful was also manifestly harsh. The Learned trial Magistrate notes on sentence in this matter are sketchy. Sentencing as already stated is a matter for the discretion of the Court. The discretion must however be exercised judicially and not capriciously. The sentencing Court must be guided by

evidence and sound legal principles. The Court must take into account all relevant factors and eschew all extraneous or irrelevant factors. Had the trial Court approached sentencing in terms aforesaid, the sentences would have been lenient. Having reconsidered the facts and circumstances of this case, I would vary the sentences imposed in terms as follows.

On count I, the Appellant shall serve two months imprisonment. On Count II, the Appellant shall serve two years imprisonment. Both sentences shall run concurrently and shall be effective from the date of conviction.

Dated at Nairobi this 24th day of January, 2007.

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MAKHANDIA

JUDGE

Judgment read, signed and delivered in the presence of:-

Appellant

Mr. Makura for State

Erick Court clerk

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MAKHANDIA

JUDGE