



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**(CORAM: OJWANG, J.)**  
**CRIMINAL APPEAL NO. 433 OF 2005**

**BETWEEN**

**JACKLINE ANISA..... APPELLANT**

**-AND-**

**REPUBLIC.....RESPONDENT**

***(An appeal against a three-year imprisonment term' imposed by Senior Principal Magistrate Ms. M. Kasera in Crim. Case No. 5029 of 2005, at the Kibera Law Courts on 10<sup>th</sup> August, 2005)***

**JUDGEMENT**

The facts of this case are very briefly recorded, in the proceedings before the learned Senior Principal Magistrate: simply that the appellant and others in her company, had on 21<sup>st</sup> June, 2005 at 2.00 p.m. accosted the complainant and taken away the complainant's handbag which contained the sum of Kshs.1050/= as well as a Nokia cellphone valued at Kshs.9250/=. The appellant was later arrested and charged with the offence of theft from the person contrary to s.279(a) of the Penal Code.

The appellant pleaded guilty to the charge on 27<sup>th</sup> July, 2005; and on 10<sup>th</sup> August, 2005 she made a plea in mitigation, the main thrust of which was that she had two children, for whom she was caring.

The learned Senior Principal Magistrate, after considering the prosecution statement that the appellant had one previous conviction, and also taking into account the plea in mitigation, expressed the view that the offence charged was a serious one, and committed the appellant to jail for three years.

The grounds of appeal stated in the petition of appeal run as follows:

- i. *the complainant had been the appellant' best friend, and she had not meant to hurt the complainant;*
- ii. *there was a failed purchase deal between the two, and this is what impelled the appellant to grab the complainant's effects;*
- iii. *"that I am a first offender and a single mother of one child who is suffering in my absence."*

At the hearing of this appeal, on 30<sup>th</sup> April, 2007 the appellant had nothing new: she pleaded that she had two children to care for, but now they were in the custody of her incapacitated mother. She pleaded: “I seek forgiveness; that is all.”

Learned State Counsel **Mr. Makora** opposed the appeal, on the main ground that the appellant had been convicted on her own plea of guilty, and had been sentenced quite properly, within the law. Counsel noted that the trial Court had taken into account both the appellant’s mitigation statement, and the record brought by the prosecution on the appellant’s past antecedent.

By s.279 of the Penal Code (Cap.63) the maximum penalty for theft from the person is **fourteen** years’ imprisonment. Therefore, quite clearly, the sentence meted out in this case had been well within the law.

By virtue of s.348 of the Criminal Procedure Code (Cap.75), it is proper for an appellant who has pleaded guilty in the trial Court to lodge an appeal in the High Court – save that such appeal is to be only “as to the extent or legality of the sentence.” The sentence awarded in the instant case, as already noted, could not be challenged on **legality**; but, could it be challenged on the propriety of its proportioning, by the learned Senior Principal Magistrate?

I don’t think so. In meting out three years’ imprisonment, out of a possible stretch of fourteen years, the trial Court, I think, deliberately exercised a *discretion*, in the light of the facts as found. Such a judicious exercise of discretion, I would hold, ordinarily carries the makings of correct and just decision-making, and so ought, in principle, to be upheld. Any disturbance of a discretion thus exercised by a Court having jurisdiction, is itself apt to be injudicious, and to be unnecessarily disruptive of the due operation of the judicial process.

In her petition of appeal the appellant opens up a new set of facts, such as are bound to be controversial. Such facts were not raised before the trial Court and, on this account, they cannot be a legitimate basis for contesting the decision which was arrived at by the trial Court.

Accordingly, I hereby dismiss the appellant’s appeal, and uphold the sentence awarded by the trial Court.

**Orders accordingly.**

**DATED and DELIVERED** at Nairobi this 10<sup>th</sup> day of May, 2007.

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: G. Ndungu**

For the Respondent: Mr. Makora

**Appellant in person**

