



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)
Criminal Appeal 60 of 2005

**(From original conviction(s) and Sentence(s) in Criminal Case No. 8817 of 2004 of the
Senior Resident Magistrate’s Court at Kibera (Mrs. Kasera -RM)**

MARGARET WANJIKU MUTHONI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

MARGARET WANJIKU MUTHONI was convicted of **STEALING BY SERVANT** contrary to **Section 281** of the **Penal Code** and sentenced to 2½ years imprisonment. The Appellant had pleaded guilty to the charge. She was aggrieved with the sentence and lodged her appeal challenging the same.

MISS GATERU, learned counsel for the State opposed the appeal. She submitted that the sentence was legal since the offence called for a maximum of 7 years imprisonment.

The Appellant gave oral submission in addition to her filed grounds of appeal. In her submission the Appellant stated that she was seeking for a review of the sentence because she felt that the one imposed by the lower court was harsh in the circumstances. That in addition to having pleaded guilty to the charges, she was a first offender.

I have considered this appeal. The Appellant pleaded guilty to the charge thus saving the court’s time. She ought to have been given credit for the same. The learned trial magistrate initially referred the matter to a Probation Officer to consider a community service order. However, after the report was presented to the learned trial magistrate, she made the following order: -

“CSO Alambo

The report is ready.

Court: - Having read CSO report accused to serve 2½ years in jail. Right of appeal explained.

SIGNED.”

An appellate court cannot interfere with the sentence imposed by a trial court exercising its discretion. However, the sentence can be interfered with if the appellate court finds that the trial court over-looked important sentencing principles.

In this case, the Court after reading the CSO Report, made no comments on it and neither did it state why the Community Service order was not being considered. The court did not also consider other

important factors, for example the Appellant's previous good record, the fact that she had pleaded guilty to the charge and this save court's time and the fact that she was a young and single mother. That was erroneous in that there was non-direction on the court's part when considering sentence.

The CSO report was also not referred to. That also was irregular. The trial court ought to have made some comments on it and ought to have shown on the record why it was not being considered. All these factors justifies this court to interfere with the sentence.

I have considered afresh the Appellant's mitigation as stated herein above. In addition I have also considered the remarks made by the Community Service Officer in his report. The report was not unfavourable. It indicates that a home report was not obtained and therefore supervision under Community Service Order was not guaranteed. That report was however not unfavourable to the Appellant and did not preclude the learned trial magistrate considering the other non-custodial sentences available. The Appellant has been in prison since 1st February 2005. She has served a substantive part of the sentence. I will set aside the sentence of 2½ years imprisonment and reduce the same to the period already served. The Appellant should be set free unless she is otherwise lawfully held.

Dated at Nairobi this 31st day of May 2006.

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LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

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LESIIT, J.

JUDGE