

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal Appeal 186 of 2004

(From Original Conviction and Sentence in Criminal Case No. 1386 of Principal Magistrate’s Court at Kajiado (NDUNG’U H.N. –P.M) on 12.10.2004).

MOSES HULLEIN KIRIMBAI

.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The appellant pleaded guilty to the charge of Escape from lawful custody contrary to Section 123 of the Penal Code. He was sentenced to 3 years imprisonment. He has appealed against the sentence on grounds it was excessive.

Mr. O’mirera for the state asked the court to find that the plea was irregularly taken and declare it equivocal. Mr. O’mirera submitted that after the facts were read to the appellant, his response amounted to a denial of the charge. He urged the court to order a retrial.

The appellants appeal is carefully considered. The appellant submitted that the sentence imposed against him was excessive. That is very true. The sentence is infact illegal as the maximum sentence for the offence charged under section 123 of the Penal Code is 2 years imprisonment.

By imposing 36 months imprisonment, the learned trial magistrate exceeded her jurisdiction.

Mr. O’mirera point was that infact the appellants response to the facts given by the prosecution during plea amounted to a denial. The appellant is recorded to have stated:-

Accused in mitigation:-**I did not escape. The door was just opened.”**

Given the facts of the case, the appellants statement would not amount to a defence. The facts were he and others overpowered a police officer and escaped. That appellant was facing a serious charge under Section 297(2) of the Penal Code which the appellant admits. The conviction was unequivocal and I would not disturb it.

The appellants appeal against sentence allowed. The sentence of 36 months imprisonment is set aside and in substitute it is reduced to 2 years imprisonment from date of original sentence in lower court.

Dated at Machakos this 31st day of May, 2006.

J. LESIIT

JUDGE