



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Criminal Appeal 42 of 2006**

**(From original conviction and sentence of the Senior Resident Magistrate's Court at Molo in  
Criminal Case No. 1059 of 2000 – J. Kiarie [SRM])**

**SAMUEL KIPKORIR LABOSO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant, Samuel Kipkorir Laboso was charged with the offence of robbery with violence contrary to **Section 296(2) of the Penal Code**. The particulars of the offence were that on the 19<sup>th</sup> of September 1999 at Marindas Baraget Farm in Nakuru District, the appellant robbed Samuel Kipkorir Shibuu of a camera valued at Kshs 2,300/= and at or immediately before or immediately after the time of such robbery, while armed with a piece of wood and a Somali sword used actual violence to the said Samuel Kipkorir Shibuu. The appellant was arraigned before the subordinate court at Molo on the 2<sup>nd</sup> of June 2000 and pleaded not guilty to the charge. After a full trial, the appellant was convicted of the lesser charge of grievous harm contrary to **Section 234** of the **Penal Code**. He was sentenced on the 14<sup>th</sup> of February 2002 to serve seven years imprisonment. After the said sentence it was ordered that he was to be placed under police supervision for a further five years. The appellant was aggrieved by his conviction and sentence and has appealed to this court.

Although in his petition of appeal the appellant challenged his conviction and sentence, at the hearing of this appeal the appellant abandoned his appeal against conviction. He however made submissions urging this court to reduce his sentence. He submitted that while in prison he had learnt a trade and had now attained grade test I in carpentry. He told the court that his health had deteriorated while in prison to the extent that he could not do work that involved too much physical exertion. He submitted that he had reformed and had been assigned by the Prisons authorities to work at the Law courts, Nakuru. He urged this court to consider reducing his sentence. Mr. Gumo for the State did not have any submissions to make as regard the plea by the appellant for his sentence to be reduced.

I have carefully considered the facts of this case and also the submission made by the appellant. The appellant was sentenced to serve seven years imprisonment on the 14<sup>th</sup> of February 2002. Prior thereto, the appellant had been in remand custody for a period of one and a half years. According to the P3 form which was produced in evidence by the prosecution the appellant had assaulted the complainant resulting in the complainant losing his two lower incisor teeth. The trial court found that the appellant had grievously harmed the complainant.

This court is aware that when a trial magistrate is sentencing an accused person, such a court is exercising judicial discretion. This court cannot therefore interfere with the exercise of discretion by a trial magistrate when he has sentenced an accused person unless it is established that such a trial magistrate had not taken into account the facts of the case and the applicable principles regarding the sentencing of accused persons. In the present case, it is clear that the trial magistrate did not take into account the period that the appellant was in remand custody before he was convicted and sentenced. The appellant had initially been charged with capital robbery and therefore could not have been granted bail by the subordinate court.

In the circumstances therefore, the period which the appellant was in remand custody ought to have been taken into account. Further, the sentence of seven years imprisonment and the order that the appellant be placed under police supervision for five years after serving the said sentence, was harsh and oppressive in the circumstances of this case. The injury sustained by the complainant was not that serious to warrant the said harsh custodial sentence. I hold that the trial magistrate therefore failed to take into account all the relevant facts of the case before sentencing the appellant. He therefore exercised his discretion wrongly when he sentenced the appellant.

In the premises therefore, I hold that the appeal by the appellant on sentence has merit. I therefore set aside the sentence of the trial magistrate and substitute it by a sentence of this court commuting the sentence of the appellant to the period already served. The appellant is therefore ordered set at liberty and released from prison unless otherwise lawfully held.

It is so ordered.

**DATED at NAKURU this 28<sup>th</sup> day of June 2006.**

**L. KIMARU**

**JUDGE**