

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 139 of 2005

(From Original Conviction and Sentence in Criminal Case No 1088 of 2004 of the Senior Resident Magistrate's Court at Garissa – J. G. King'ori, SRM)

IBRAHIM NURE SHORAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This Appeal is against sentence only. The Appellant ***IBRAHIM NURE SHORA*** was charged in the Senior Resident Magistrate's Court, at Garissa with one count of malicious damage to property contrary to Section 339 (1) of the Penal Code. The particulars of the charge were that on the 24th day of November, 2004 at Garissa Law Courts in Garissa District within North Eastern Province the Appellant damaged a door of Garissa Law Courts cells the property of the Government of Kenya valued at Kshs.10,000/=.

Upon arraignment in Court on 25th November, 2004 and the charge having been read to him, the Appellant pleaded guilty to the same and was accordingly convicted on his own plea of guilty. Upon conviction he was sentenced to 3 years imprisonment. The Appellant was aggrieved by the sentence and hence lodged the instant Appeal. In his petition of Appeal the Appellant claims that the sentence imposed was excessive and punitive, that he was the sole breadwinner, remorseful and did not intend to offend the law by his action.

When the Appeal came up for hearing before me on 26th September, 2006, the Appellant maintained that he was remorseful for his actions and sought forgiveness. He undertook if released never to commit any crime.

Mrs. Gakobo, Learned State Counsel opposed the Appeal. Counsel submitted that the sentence imposed was legal. That the offence the Appellant was convicted of attracts 5 years imprisonment. The 3 years imposed on the Appellant could not therefore be said to be harsh and excessive.

Counsel further submitted that the Court considered that the Appellant committed the offence after he had been convicted of another offence. The Appellant was therefore not remorseful at all.

Sentencing is generally a matter for the discretion of the trial Court. The discretion must however, be exercised judicially and not capriciously. The trial Court must be guided by evidence and sound legal principles. It must take into account all relevant factors and eschew all extraneous or irrelevant factors. Certainly the Appellate Court would be entitled to interfere with the sentence imposed by the trial Court if it is demonstrated that the sentence imposed is illegal or is so harsh and excessive as to amount to a miscarriage of justice, and or that the Court acted upon wrong principle, took into account irrelevant and extraneous factors and finally if the Court exercised its discretion capriciously. See generally, ***OGALO S/O OWUORA VS REPUBLIC (1954) 19 EACA 270, JAMES VS REPUBLIC (1950) 10 EACA 147, NILSON VS REPUBLIC (1970) EA 599*** and ***WANJEMA VS REPUBLIC (1971) EA 493***.

The trial Court's notes on sentence in this matter are extensive and detailed and that is how it should be.

The trial Court is obliged to make such detailed notes on the matters it took into account in arriving at the sentence imposed. Ofcourse such detailed notes are not essential in cases where only one sentence is provided for by the Penal Provisions. In the instant case, the trial Court gave reasons why it felt that custodial sentence was desirable. I do not discern anything capricious that the trial may have taken into in arriving at the sentence. If anything the trial Court exercised its discretion in sentencing judiciously. The trial Court did not also take into account extraneous matters or failed to take into account relevant matters. The trial Court was certainly alive to the principles of sentencing. Yes the offence attracts a maximum jail term of 5 years upon conviction. The Appellant was sentenced to 3 years. Although ordinarily this may pass of harsh sentence, however considering the manner in which the offence was committed, the sentence was deserved. Apparently, the Appellant was not happy with his earlier convictions and sentence and opted to vent his anger in the Court cells grill door. This was uncalled for and as correctly submitted by the Learned State Counsel the Appellant was not remorseful at all. The trial Court ought to have considered the Appellant's mitigation. However I am persuaded that the failure did not occasion the Appellant any prejudice or injustice. After all the sentence imposed was within the law.

Taking all the foregoing into consideration, I find that the Appeal on sentence lacks merit and it is accordingly dismissed. The sentence of 3 years imprisonment imposed on the Appellant is hereby confirmed.

Those shall be the orders of the Court.

Dated at Nairobi this 30th day of October, 2006.

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MAKHANDIA

JUDGE