



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 275 of 2003

THADEUS MUUMO MULWA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

The Appellant has appealed against the original conviction and sentence in Criminal Case No.353 of 2003 of the Resident Magistrate's Court, at Narok.

In that case, the appellant had been charged for the offence of burglary and stealing, contrary to Section 304(2) and 279(b) of the Penal Code. The facts of the prosecution case as stated in the charge sheet are as follows:-

“On the 17th day of June, 2003 at Spear Plot Narok Township in Narok District of the Rift Valley Province, broke and entered the dwelling house of TOM MUTUNGI NDETI with intent to steal therein and did steal therein one long trouser, 4 Kg of honey and Cash Kshs.150/- all valued at 2260/- Kenya Shillings the property of the said TOM MUTUNGI NDETI”

When the Appellant appeared in Court on 19th June, 2003, he pleaded “Guilty” and was convicted accordingly. On the same day, he was sentenced to 7 years imprisonment with hard labour and 3 strokes of the cane – for the 1st limb.

As far as the second limb was concerned, the learned Magistrate sentenced him to 3 years imprisonment. He also ordered that the sentences should run concurrently. During the appeal, the Appellant lamented that the sentence imposed was very lengthy and that both his parents are dead. He also revealed to the Court that he was married with two children. Besides the above, the Appellant also explained that the complainants were not called to give evidence and that the conviction was not proper.

On the other hand, Mr. Koech, Senior State Counsel submitted that the Appellant was convicted and sentenced on his own plea of “Guilty”. He was of the view that the Appellant can only appeal against sentence. On that point he invited the Court to exercise its own discretion.

This Court has carefully perused the above together with the record of appeal. The record clearly show that the Appellant was convicted on his own plea of “Guilty” and the facts were read over to him before he admitted them. So the question of the complainants being called to give evidence does not arise at all. The Court finds that the Appellant was properly convicted by the learned Magistrate, viz Mr. P. Okile, Resident Magistrate. As far as the sentence is concerned, the Court notes that the maximum sentence as provided by law is 10 years imprisonment. In this case, the total value of the stolen goods was a paltry

Kshs.2,260/-. The Court notes that the Appellant has been in remand for slightly over 2 years. Given the circumstances of the case, I hereby set aside the sentence of 7 years. Besides the above, I hereby set aside the 3 strokes of the cane since corporal punishment has been outlawed.

Instead of the above sentence, the Court hereby calls for a Probation Report on 26th July, 2005. The Report will act as a guide to the sentence that the court will impose.

It is to that extent that the appeal succeeds.

MUGA APONDI

JUDGE

21ST JULY, 2005

Judgment read signed and delivered in open Court in the presence of the Appellant and Mr. Gumo, Assistant Deputy Public Prosecutor.

MUGA APONDI

JUDGE

21ST JULY, 2005