

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL 476 OF 2003

(From original conviction and sentence in Criminal Case No. 2363 of 2000 of the Senior Principal Magistrate’s Court, Naivasha – Mr. Martin Muya)

HENRY MWANGI GIKONYO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant has appealed against the original conviction and sentence in Principal Magistrate Naivasha Criminal Case No. 2363 of 2000. In that case, the Appellant had been charged for the offence of preparation to commit a felony contrary to Section 308 (2) of the Penal Code.

The facts of the prosecution case as stated in the Charge Sheet are as follows:

“On the 9th December, 2000 along Mai-Mahiu-Naivasha Road within Nakuru District of the Rift Valley Province, jointly with others not before Court not being at his place of abode, had with him one toy pistol, one walkie-talkie and on imitated police cap likely to be used in the course of committing a felony namely robbery.”

After a full trial, the Appellant was found “guilty” and convicted accordingly. Consequently, the learned Magistrate viz, Mr. Martin Muya, then Senior Principal Magistrate, Naivasha sentenced the Appellant to 7 years imprisonment and 8 strokes of the cane. He also ordered that the Appellant be placed under police supervision for 5 years after he has completed his sentence. During the hearing, the Appellant opted to abandon his appeal on conviction. Instead, he appealed against the sentence that was imposed against him. The Appellant complained that when he was jailed, he had hypertension which resulted in him being admitted at the Kenyatta National Hospital for 5 months. Besides the above, the Appellant explained that he has been trained in leatherwork and upholstery design.

On the other hand, the State through **Mr. Gumo**, Assistant Deputy Public Prosecutor submitted that he wished to leave the matter with the Court. This Court has carefully perused the above together with the entire record of appeal. It is apparent that the Appellant was arrested while in possession of a toy pistol, a walkietalkie and imitation police cap. The evidence was simply overwhelming against the Appellant and hence that explains why he opted **not** to challenge the conviction. As far as the sentence is concerned, the maximum provided by the law is imprisonment with hard labour for 5 years. In this case, the Appellant was sentenced to 7 years imprisonment and 8 strokes of the cane. Given the circumstances of the case, I hereby reduce the sentence imposed to the period already served. I will also set aside the corporal punishment of 8 strokes of the cane since the above Section is silent on the same. That means that the legislature never saw any need to impose corporal punishment. It is only to that extent that the appeal succeeds. The Appellant should be released forthwith unless held lawfully.

MUGA APONDI

JUDGE

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

MUGA APONDI

JUDGE

25TH OCTOBER, 2005