

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 366 OF 2003

(From Original Conviction and Sentence in Criminal Case No.2257 of 2003 of the Resident Magistrate's Court at Kwale –L.N. Mbatia, Ms –S.R.M.)

ALI GARI NGOME.....APPELLANT

=V E R S U S=

REPUBLIC.....RESPONDENT

J U D G M E N T

This appeal is against sentence only. The Appellant pleaded guilty in the lower court.

The Appellant is a first offender. He readily pleaded guilty to the charge. He was sentenced to 3 years imprisonment. He now, through his advocate pleads that the custodial sentence is excessive and harsh particularly in view of his advanced age. His counsel urged that the custodial sentence is not suitable in the circumstances.

I have considered the submissions of counsel and also of State Counsel. The stand of the State is that when the Appellant was given opportunity to mitigate he had nothing to say. He kept quiet. Ms Kwena submitted further that the court should not interfere as the sentence was not illegal.

It is a correct principle of sentencing that first offenders should not be placed in prison where they will be exposed to hardcore criminals. Also that an accused who has pleaded guilty should be treated with leniency – he has saved everybody's time. However, in this case there is a serious aspect to it the Appellant has wronged his community. He has abused their trust. It would be inappropriate to put him under Community Order or on Probation because he would return to the same community who might think he has been left free. This might aggravate the situation.

For this reason I find imprisonment term to be more reasonable. The maximum sentence here is 7 years imprisonment. I think it is fair to set the sentence of 3 years aside and substitute the same with a lesser term of 18 months only. Ordering restitution may not be effective. The Appellant does not appear to be a man of substance. The money which he was entrusted with was being paid to him from time to time in instalments. However, I am not saying that a civil suit should not be preferred to recover the money in a civil court.

For these reasons the Appellant is sentenced to 18 months imprisonment from the date of conviction.

Dated at Mombasa this 28th day of January, 2004.

JOYCE KHAMINWA

J U D G E

**Judgment read in open court in presence of Ms Kwena – State Counsel
And Mr. Gakuhi – holding brief for Weloba.**