

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.58 OF 2001

(Being an appeal from Original Conviction and Sentence in Criminal Case No.2502 of 2000 of the Chief Magistrate's Court at Mombasa –R. Ndubi, RM)

ROBBINSON WANJALA SHUMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant now admits the offence and says he would only like sentence to be reviewed so that he can go home from jail. He has abandoned other grounds of Appeal. I notice he is first offender and he is asthmatic as he told the lower court. He also asked for leniency in the lower court. The stolen items were recovered. Normally an appellate court would not interfere with the sentence pronounced by the trial court. The trial court is best placed to assess sentence, observe the witnesses and the demeanor of accused at the trial.. However the appellate court may review the sentence if it appears excessive, harsh or unreasonable in the circumstances. The first offender is usually given a sentence that will enable him to reform. In the circumstances of this case there are mitigating factors to enable this court to interfere with the sentence.

I am of the view that the appellant will benefit by a lenient sentence of 12 months imprisonment in each count to run concurrently with one stroke of the cane. I therefore set aside the sentence imposed by the lower court and substitute the same with imprisonment for a period of 12 months on each count with one stroke of the cane. Imprisonment terms to run concurrently. Appeal allowed tot hat extent.

Dated at Mombasa this 11th Day of March, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE