

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 481 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 311/2000,
324, 75/1999 of the Resident Magistrate's court at Taveta G.M. Gogwe Esq.,

D.M.I)

JOSHUA MWEMA SITA APPELLANT

Versus

REPUBLIC RESPONDENT

J U D G E M E N T

The Appellant was charged with the offence of stealing contrary to Section 275 of the Penal Code and the particulars were that on diverse dates between 16th July 1999 and 9th August 1999 at Tsavo West National Park in Taita/Taveta District of the Coast Province jointly with others not before court he stole twelve (12) solar Panels valued at Ksh. 720,000/=, the property of Telcom Kenya Limited. He was in the alternative charged with the offence of Handling Stolen Goods contrary to Section 322(2) of the Penal Code in that on 8.8.99 at Bura dogo village in Taita/Taveta District of the Coast Province jointly otherwise than in the cause of stealing dishonestly received or retained two (2) Solar Panels knowing or having reason to believe them to be stolen goods or unlawfully obtained.

He was convicted of the offence of theft and was sentenced to serve four (4) years imprisonment. The sentence was awarded on 29.9.2000. That in effect meant that as count 2 was alternative to count 1 and as he was convicted on count 1, count 2 is no longer there against him.

The Appellant originally appealed against both conviction and sentence but at the time of hearing this appeal he abandoned the Appeal on conviction and proceeded with the appeal on sentence. The learned State Counsel while conceding that the sentence of four years imprisonment was illegal maintained nonetheless that the Appellant deserved custodial sentence as the Solar Panels stolen belonged to the Public and for international communication and so the offence was a serious one.

I have considered the sentence awarded. I do agree that the sentence of four years for the offence under section 275 of the Penal Code was illegal. The maximum sentence provided under section 275 of the Penal Code is imprisonment for three years. That was the maximum sentence the court could award under the section. The learned Magistrate erred in awarding four years imprisonment. The Appellant was treated as a first offender. Some of the stolen Solar Panels were recovered. He has served one year and seven months in prison. It would appear to me that the Appellant though was ordered to be out on bond if they each deposited Ksh. 150,000 and provided sureties, they were unable to provide the same and so they have been in custody and thereafter in prison since 12.8.99 when they were first produced into the court.

Doing the best I can in the circumstances and bearing in mind that the maximum sentence for this offence is three years imprisonment, I will sentence the Appellant to such a term as would enable him to be released forthwith. I do substitute the sentence of 4 years imprisonment with a sentence of 18 months

imprisonment. The appeal on conviction is dismissed. Appeal on sentence succeeds to the extent that the sentence of 4 years imprisonment is substituted with a sentence of 18 months imprisonment. Judgement accordingly.

Dated at Mombasa this 17th day of April 2002.

J.W. ONYANGO OTIENO

JUDGE