

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.533 OF 2000

(From Original Conviction and Sentence in Criminal Case No.3462 of 2000 of the Chief Magistrate's Court at Mombasa –Mbaabu Mugambi, Esq., - R.M.)

MOHAMMED ABDULKARIM MOHAMMED.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T O F C O U R T

The Appellant Mohamed Abdulkarim Mohamed pleaded guilty to the charge of Theft from a locked Motor Vehicle contrary to Section 279(g) of the Penal Code. He was sentenced to serve imprisonment of 5 years. He now appeals on sentence only. He pleads that he had pleaded guilty to the offence, he was a first offender, he has a large family of a wife and four children to look after and that taking all circumstances into account, the sentence is harsh and excessive. The stolen property was recovered.

To start with the sentence as it is, as pointed out by Miss Mwaniki for the State, is not proper in so far as it does not include a corporal punishment. It therefore stands to be replaced with a proper sentence to be meted out by this court. Secondly, in pronouncing sentence the trial Magistrate noted only that the Accused is a first offender. He did not take into account the fact that he had pleaded guilty although he noted that the offence is a serious one. Since this court is now seized with the jurisdiction of imposing a fresh sentence because the one meted out by the lower court is improper, I will take into account other factors since then brought on the record.

They include the fact that the Appellant has a large family of young children and a wife and that he pleaded guilty to the offence. The stolen property, apparently, a motor vehicle tyre, was recovered. The Appellant is remorseful and states he will not repeat the offence and that he has learnt adequate lesson. I have considered the mitigation and also the facts from which the offence arose. It is my considered view that a sentence of two years imprisonment will serve the purpose of punishment in this case. He will also receive four strokes of the cane.

The original sentence of five years is accordingly set aside and replaced by two years and 4 strokes of the cane. It is so ordered.

Dated and delivered at Mombasa this 27th day of May, 2002.

D. A. ONYANCHA

J U D G E