



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 297 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 350 of 2000
of the Chief Magistrate's Court at Mombasa – R.M. Mbaabu – R.M.)

SYLVESTER KELI KAKUMI APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G E M E N T

The Appellant was charged and convicted together with another for the offence of Theft from a locked motor vehicle contrary to Section 279 (g) of the Penal Code and was sentenced to serve 7 years imprisonment. He was however discharged in respect of an alternative count of Handling Stolen goods contrary to Section 322 (2) of the Penal Code under Section 215 of the Criminal Procedure Code. He filed an appeal and cited 5 grounds which he argued together.

At the start of the Appeal, the Appellant indicated that he did not wish to say much as he only pleaded for leniency and reducing of his sentence.

He further submitted that the court convicted him on the face of contradicting evidence as to the exact time the complainant PW1 had parked her motor vehicle on the material date. In her evidence in chief she gave the time as 6.15 p.m. while the arresting officers PW2 and PW3 stated that they met and arrested the appellant and his co-accused at around 5.30 p.m. Is the contradiction such that it may have prejudiced the Appellant's conviction? There is the other evidence which need to be considered in the light of this contradiction to arrive at an answer. The Appellant and his co-accused were spotted by PW2n and PW3 who were on patrol duty at Mwembe Tayari area at around 5.30 p.m. According to the two officers, the Appellant and his accomplice were carrying the basket with its contents with each holding the handle on either side. The complainant, PW1 identified the basket and the contents therein as hers after the police called her on finding her details in some of the stolen documents. In view of circumstances surrounding their arrest, and having been found within the stolen items the issue of the discrepancy in the time cannot be taken as one that may have served any injustice to them.

The other ground raised was that the investigating officer was not called. It is for the prosecution to decide which witnesses are relevant to their case. In this instant, the investigating officer played a very insignificant role and his evidence may not have been necessary. The State Counsel opposed the appeal on the ground that the evidence was overwhelming as the Appellant and his accomplice were caught red-handed carrying the stolen items soon after the incident. She further prayed for the enhancement of the sentence as the Appellant had turned into an habitual offender and had 4 relevant previous convictions out

of 7.

Appellant maintained that his sentence should be reduced as he had not only reformed but had made amends with his creator and was ready to lead an upright life. As to whether he is genuine or not, this is an issue between him and his creator. However he should remember that in such a situation, he should also be prepared to pay for the wrongs committed.

He has been in and out of jail and does not seem to have learned to keep of the wrong side of the law. Prisons are meant to help people like him to reform and perhaps his stay this time will yield a better result. As pointed out by the State Counsel the maximum sentence provided for is 14 years and corporal punishment. He got 7 years only. Having considered the grounds of his appeal and the submissions by the State Counsel and in exercise of the powers bestowed upon this court, the sentence herein is enhanced and Appellant shall receive 3 strokes of the cane.

The Appeal therefore fails.

Dated and Delivered at Mombasa this 14th day of June, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE