

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.409 OF 2001

(Being an Appeal from Original Conviction and Sentence in Criminal Case No.471 of 2001 of the District Magistrate's Chambers at Taveta –T.L. Ole Tanchu, DM. II)

YASSIN MAHORA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant in this Appeal Yassin Mahora had pleaded guilty to the alternative charge of handling stolen property contrary to Section 322(2) of the Penal Code. The charge stated that on 19th day of October 2001 at Chachewa Village Taveta in Taita/Taveta District within Coast Province, jointly otherwise than in the course of stealing, arranged the retention of four (4) bundles of Robbins knitting threads and three (3) bundles of Maasai Lessos the property of Ahmed Derow. Although his Memorandum of Appeal is headed "Appeal against length of sentence", a careful reading of the same leaves one with a clear feeling that he was appealing against conviction as well and is stating in so many words that the Appellant pleaded guilty because he was beaten and he did not understand the procedure in the court.

I have thoroughly perused the proceedings. It does appear to me that the court afforded every opportunity to the Appellant and there was no reason to suppose the appellant did not understand what he was doing when he pleaded guilty and accepted the facts of the case as read. I have noted that when Accused 4 made some remarks that indicated that his plea was not unequivocal, the court declined to enter a plea of guilty for him and a plea of not guilty was entered. I do not accept this belated attempt to change plea or to challenge the plea. Plea of guilty will stand, as it was properly taken and was unequivocal.

The court in sentencing the Appellant failed completely to consider his mitigation and only considered the seriousness of the offence. It is trite law that the court in considering sentence must consider not only the circumstances of the case but also the circumstances of the accused. The court therefore did not direct himself properly on the principles of sentencing. The State Counsel does not support the sentence and rightly too. Appellant was first offender and pleaded guilty at the very start of the case, saving court's time in that process.

I will reduce the sentence from that of 4 years imprisonment to that of 2 years imprisonment. The appeal on sentence succeeds to that extent.

Dated and Delivered at Mombasa this 30th Day of August, 2002.

J.W. ONYANGO OTIENO

JUDGE