



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL CASE NO. 214 OF 2002

(Being an Appeal from Original Conviction and Sentence in Criminal Case No.227 of 2002 of the District Magistrate's Court at Taveta –G.M. Gogwe, DM.I)

JESSE KAVITI APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

This was an appeal against sentence only. The Appellant pleaded guilty to three counts namely two counts of theft of a bicycle and workshop breaking. He was sentenced to serve 3 years imprisonment on each of the two counts of theft of a bicycle and 4 years imprisonment with 4 strokes of the cane in respect of the third count of workshop breaking and committing a felony. In sentencing the Appellant the learned Magistrate states as follows:

“The offence is very serious and on the increase these days. Accused deserves no mercy.”

The Prosecution had asked the court to treat the Appellant as a first offender and the Appellant had in mitigation pleaded for leniency stating that he had a wife and children to take care of. The learned Magistrate did not indicate anywhere that he considered these aspects; and proceeded to award maximum sentences for counts 1 and 2 which carry three years imprisonment as maximum sentence. He also awarded four years for count 3.

I do agree the facts of the case clearly show that the Appellant is a habitual bicycle thief (for even in count 3, he stole a bicycle also after breaking the workshop) and there is need to discourage him as he seems to have Receivers and is likely to be making business out of his criminal activities. I also agree that the manner in which he carried out the theft of bicycles in the first two counts clearly indicates that he has also perfected the art of deceit particularly on his friends and those who know him and care to give him help. However, I do not think it was fair to award maximum sentences in counts 1 and 2 merely because of the unproven allegation of the prosecution that the crime was on the increase without any statistics to support it. I do not think it was fair to fail to consider the mitigating circumstances of the accused while considering the circumstances of the offence.

I do not interfere with the sentence. I do reduce the sentences of 3 years imprisonment on counts 1 and 2 to

that of 2 years imprisonment on each count. I also reduce the sentence of 4 years imprisonment with four strokes of the cane on count 3 to that of 3 years imprisonment with three strokes of the cane.

Imprisonment terms to run concurrently. Judgment accordingly.

Dated and delivered at Mombasa this 27th Day of August, 2002.

J.W. ONYANGO OTIENO
JUDGE