



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.525 OF 2000**

**(From Original Conviction and Sentence in Criminal Case No.3659 of 2000 of the Chief Magistrate's Court at Mombasa –F. Muchemi, Ms –C.M.)**

**RASHID KOMBO.....APPELLANT  
V E R S U S  
REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant was charged with 3 Counts. In Count 1: Obtaining by False Pretences contrary to Section 313 of the Penal Code. Count 2: Resisting Arrest contrary to Section 254(b) of the Penal Code and Count 3: Malicious Damage to Property contrary to Section 339(1) of the Penal Code. He pleaded guilty to all the 3 Counts, was convicted on his own plea of guilty and sentenced to 2 years, 6 months and 3 months respectively. His appeal to this court is against sentence only.

An Appellate Court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case. The instant sentence merits this court's interference with it on each of these grounds: No account was taken, as it should have been, of the fact that the Appellant pleaded guilty. The Appellant was a first offender.

He has shown remorse and the age of the Appellant. The Appellant informs the court that he is remorseful and has accepted Jesus and is a born again Christian. He is sorry for what he did and prays for leniency. In the circumstances the sentence awarded to the Appellant is excessive. The Appellant has served 10 months in jail. The appeal is allowed and the sentence reduced to the period served.

I order that the appellant be set at liberty immediately unless otherwise lawfully held.

Dated and delivered at Mombasa this 18th day of September, 2001.

**J.L.A. OSIEMO**

**J U D G E**

