



**Lorem v Republic (Criminal Appeal E001 of 2024)
[2024] KEHC 3587 (KLR) (9 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 3587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL APPEAL E001 OF 2024**

JN NJAGI, J

FEBRUARY 9, 2024

BETWEEN

STEPHEN LOREM APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence by S.K .Arome, Principal Magistrate, in Marsabit MCCR Case No.E201 of 2023 delivered on 28/12/2023)

JUDGMENT

1. The appellant was convicted for the offence of stealing contrary to section 268 as read section 275 Of the *Penal Code*. The particulars of the offence are that on 14th December 2023 at around 2000 hours at Harsh Petrol station within Marsabit Central Sub- County in Marsabit County he stole Oppo phone A31 valued at Kshs 15,000/= the property of Taxia Aden (herein referred to as the complainant).
2. The appellant pleaded guilty and was convicted on his own plea of guilty. He was sentenced to serve 3 years imprisonment. He was aggrieved by the conviction and the sentence and filed this appeal. The grounds of appeal are, *inter alia*, that:
 - (1) The trial magistrate failed to consider his mitigation.
 - (2) The sentence meted out was harsh and excessive.
 - (3) The consequences of pleading guilty were not explained to him.
3. The facts that the appellant pleaded guilty to are that on the 14/12/2023 at around 8 pm the complainant was walking home when the appellant reached her at Hass petrol station while riding a motor cycle. He started to talk to her. All over a sudden he grabbed her mobile phone and rode away. The complainant reported at Marsabit petrol station. On the 18/12/2023 the complaint found the



- appellant fueling his motor cycle at the same petrol station. He was arrested and the mobile phone recovered. He was taken to the police station. He was charged with the offence.
4. According to the record of the lower court, the charge was read over and explained to the appellant in Kiswahili language. He admitted the charge. The facts were then read over to him and he admitted them. He was then convicted on his own plea of guilty.
 5. Among the appellant's ground of appeal is that the consequences of pleading guilty were not explained to him. However, in his address to this court in form of submissions, the appellant did not raise that issue. He instead raised a different issue that when he appeared before court a policeman approached him before he was called to take plea and told him to admit the charge so as to finish the matter. That when he was called and the charge read to him, he admitted the charges.
 6. The state in this appeal submitted that the appellant admitted the charge. That he was interviewed by the probation officer and he admitted having committed the offence. Therefore, that the plea was properly taken and the conviction was proper.
 7. The manner of taking pleas was explained in the case of *Adan v Republic* [1973] EA 445 where the Court of Appeal laid down the steps which should be followed in taking pleas as follows:
 - (i) the charge and all the essential ingredients of the offence should be explained to the accused in his lang
 - (ii) the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded;
 - (iii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;
 - (iv) if the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered;
 - (v) if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded."
 8. I have perused the record of the trial court. The record indicates that the plea was read and explained to the appellant in Kiswahili language. When he was asked whether or not he admitted the charge he answered that:

"It is true".
 9. The facts were then stated to him and he admitted the facts. From the foregoing, I find that the plea was taken in accordance with the guidelines stated in the case of *Adan v Republic*. The allegation by the appellant that he pleaded guilty due to undue coercion by a police officer cannot be true as he did not raise that issue in his grounds of appeal. The plea was properly taken.
 10. The appellant was sentenced to serve 3 years imprisonment for the offence of stealing a mobile phone valued at Kshs 15,000/=. He argued that the sentence imposed on him was harsh and excessive. The state submitted that since the appellant pleaded guilty, the court can re-look into the sentence. It was submitted that the appellant saved the court's time in pleading guilty to the offence.
 11. The appellant stated in mitigation before the trial court that he was aged 24 years and was married with one child. That he would not repeat the offence.



12. The trial court called for a pre- sentence report that was prepared by a probation officer. The report indicated that the appellant was admitting to have committed the offence and prayed for leniency in sentencing. That he was a first offender and had no criminal history from the Probation Office. The report however indicated that cases of phone snatching had increased in Marsabit town and the appellant required to be given a deterrent sentence so as to send a stern warning to other would be offenders.
13. Sentencing is a discretion of the trial court. In *Farah Abdi v Republic* (2006), Makhadia J. (as he then was) held that:

Sentencing is generally a matter for the discretion of the trial Court. The discretion must however, be exercised judicially and not capriciously. The trial Court must be guided by evidence and sound legal principles. It must take into account all relevant factors and eschew all extraneous or irrelevant factors. Certainly the Appellate Court would be entitled to interfere with the sentence imposed by the trial Court if it is demonstrated that the sentence imposed is illegal or is so harsh and excessive as to amount to a miscarriage of justice, and or that the Court acted upon wrong principle, took into account irrelevant and extraneous factors and finally if the Court exercised its discretion capriciously.

14. The Court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR discussed the principles of sentencing and cited the Supreme Court of India in *Alister Anthony Pereira v State of Maharashtra* at paragraph 70-71 where the court held the following on sentencing:

Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principles of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

15. In sentencing the Appellant to 3 years imprisonment, the trial court stated that it had considered the report of the probation officer. The court did not indicate whether it had considered the mitigation of the Appellant. The court seems to have ignored the appellant's mitigation and appears to have been swayed by the statement of the probation officer that phone snatching had become rampant in Marsabit town. There was no evidence tendered to prove that. I find the sentence of 3 years imprisonment to have been excessive for a first offender.
16. I have considered that the appellant was aged 24 years at the time he was sentenced. He was a first offender with a family. The phone stolen was valued at Kshs 15,000/=. Considering all these factors, I find a sentence of one-year imprisonment to be appropriate for the offence committed.
17. The upshot is that the appeal herein succeeds on sentence which is reduced to one-year imprisonment. The same to be served commencing from the date of plea, i.e. 19/12/2023.



DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 9TH FEBRUARY 2024

J. N. NJAGI

JUDGE

In the presence of:

Mr. Otieno for Respondent

Appellant- present in person

Court Assistant – Abdow

14 days R/A.

