



REPUBLIC OF KENYA



**Lucheda v Republic (Criminal Appeal E0118 of 2023)
[2024] KEHC 13405 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL APPEAL E0118 OF 2023
RPV WENDOH, J
OCTOBER 25, 2024**

BETWEEN

YONA WASAI LUCHEDA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal arising out of conviction and sentence of Hon. B.O. ONDEGO
(Senior Principal Magistrate) in Kapenguria Chief Magistrate's Court
Criminal Case No. E905 OF 2023 delivered on 10th November, 2023)*

JUDGMENT

1. Yona Wasai Lucheda was convicted on his own plea of guilty on three counts of stealing a motorcycle contrary to section 278(A) of the Penal Code.

The particulars of the charges are that: -

Count 1

On the night of 12th and 13th September 2023 at Makutano Township, jointly with others not before the court, stole motorcycle KMFS 616V make TVS HLX worth Kshs.100,000/-, the property of Alex Juma.

Count II

On the 28th June 2023, at Embasi, Makutano Township, with others not before the court, stole a motorcycle KMGH 159S make Honda, worth Kshs.150,000/- the property of Krop Mariach.

2. In the alternative, he handled stolen property contrary to section 322(1)(2) of the Penal Code in that on 30th September, 2023 at Morita Trading Centre in Uganda, otherwise than in the cause of stealing,



dishonestly received or retained a motorcycle KMGH 159S, Honda knowing or having reason to believe it to be stolen.

Count III

That on 5th August, 2023 at unknown time in Makutano Township, West Pokot jointly with others not before the court, stole a motorcycle Reg. No. KMFZ 966P make Honda, the property of Jonathan Ptiyos Adungo.

3. In the alternative, he was said to have received or retained the said motorcycle KMFZ 966P at Nakapiripirit Centre in Uganda, knowing it to be stolen.
4. Upon pleading guilty, the appellant was sentenced to serve three years imprisonment on each count.
5. The appellant is dissatisfied with the sentence. He alleges that the same is harsh and excessive. He also raised issue with interpretation of the sentence; that from what the trial court stated that he was sentenced to three years on each count and they were to run concurrently. It is the appellant's view that he should serve 3 years imprisonment.
6. The respondent filed submissions conceding the appeal. The prosecution counsel urged that the appellant should serve a total of 3 years imprisonment but not nine (9) years.
7. I have considered the grounds of appeal. When sentencing the appellant, the trial court said;

“I order the accused to serve imprisonment for 3 years on each count separately. The sentences will run concurrently.”
8. The court's statement is unclear. It is not clear what the court meant by “3 years on each count separately”. It seems the prison understood the court's order to mean that the appellant was to serve a total of nine (9) years imprisonment only.
9. When the court is sentencing on several counts, it must clarify whether the sentence will run concurrently or consecutively. If the sentences will run concurrently, it means they will run at the same time, together. If the sentences will run consecutively, it means, they will run one after the other. Since it was not clear from what the trial court said, I will find that the appellant should benefit from the ambiguity and serve a less punitive sentence.
10. In the end, I allow the appeal, set aside the ambiguous sentence. I hereby sentence accused to three (3) years imprisonment on each count and the sentences will run concurrently. The effect is that he will serve three years imprisonment. The sentence will commence on 10th November, 2023. The Appeal succeeds to that extent.

It is so ordered

DELIVERED, DATED AND SIGNED AT KITALE THIS 25TH DAY OF OCTOBER, 2024.

LADY JUSTICE R. WENDOH.

Judgment delivered virtually in the presence of;-

D. Majale for state - present

Appellant – present

Juma/Duke – Court Assistants

