

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO. 14 OF 2020

DENNIS WANYONYI SIMIYU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against the sentence of the Hon. G. ADHIAMBO- PM)

JUDGEMENT

1. **Dennis Wanyonyi Simiyu**, the Appellant, was charged with two (2) Counts of Robbery with violence Contrary to Section 296 (2) of the Penal Code. Particulars of the offence were that he robbed two (2) complainants, **Hillary Mukhwana Sifuna** and **Brian Sitoti Wekesa** of Motorcycle and cash money and during the robbery actual violence was used, charges that he denied.

2. Having been taken through full trial he was found guilty and pursuant to the provisions to Section 179 of the Criminal Procedure Code (CPC), convicted of minor cognate offences of handling stolen goods Contrary to Section 322 of the Penal code in respect of Count 1 and Simple Robbery Contrary to Section 296 (1) of the Penal Code in respect of count 2. Hence being sentenced to two (2) years and three (3) years imprisonment, respectively. Sentences were ordered to run concurrently.

3. Aggrieved, he admitted having committed the offence and mitigated on sentence. In his written submissions he pleads for leniency. He argues that he has totally reformed hence his prayer for a non-custodial sentence for the remaining period; that he is a youth who has been trained as a peer educator to free the society of crime hence promised to educate other youths concerning wrong motives; and, that, he has undergone vocational training in masonry, hence his prayer to build the Nation.

4. The appeal is opposed by the State/Respondent. It is argued that the case was proved to the required standard and the trial court having invoked provisions of section 179 of the CPC, the sentence imposed was lenient. In the circumstances, therefore, It urged the court to sentence the appellant as provided under Section 354(3) (b) of the CPC.

5. The Appellant challenges sentences meted out. In the circumstances, he was required to demonstrate that the sentences were passed by the court which was actuated by wrong principles of the law. In the case of ***Wanjema-vs- Republic (1971) EA 493 Traveyan J.*** stated that:

“An appellate court should not interfere with the discretion which a trial court has exercised as to the sentence unless it is evident that it overlooked some material factors, took into consideration some immaterial fact, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

6. The purpose of Judicial sentencing is deterrence and rehabilitation. This is case that called for an action of discouraging such events through fear of consequences. It has not been alleged that the trial court overlooked some material factor or that it took into account wrong principles that it should not have considered. Prior to the learned Magistrate sentencing the Appellant, he took into consideration mitigation factors and the seriousness of the offence that was committed. In the circumstances I find the appeal lacking merit. Accordingly, it is dismissed.

7. It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED AT BUNGOMA THIS 10TH DAY OF SEPTEMBER, 2021

L. N. MUTENDE

JUDGE

10.9.2021