

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL APPEAL NO. 2 OF 2019

JOB MUSILI MWANGANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Being an appeal from the original conviction and sentence in **Kyuso Principal Magistrate's Court Criminal Case No. 94 of 2018** by **Hon. M. Nasimiyu (SRM)** on 20/09/18)*

J U D G M E N T

1. Upon arraignment in Court, **Job Musili Mwangangi** the Appellant was charged with three (3) Counts of **Burglary and Stealing** contrary to **Section 304(1)(2)** and **279(b)** of the **Penal Code**. Each Count had an alternative charge of **Handling Stolen Goods** contrary to **Section 322(2)** of the **Penal Code**.
2. He was taken through full trial, found guilty of the alternative charge to Count 2, convicted and sentenced to **five years imprisonment**.
3. In that particular charge he was found in possession of two (2) pairs of shirts, two (2) skirts, night dress, two (2) petticoats, two (2) panties, five biker shorts, kiwi, ruler, colgate, four (4) always pads, torch, two (2) tissue papers, three (3) brassieres, all valued at **Kshs. 5,000/=** the property of **Kayuma Mutui**.
4. Having been satisfied with the conviction, he appeals against the sentence. His humble plea is for the sentence to be reduced to one and a half years imprisonment.
5. This Court directed the Probation Officer to carry out a social enquiry in his regard. It was established that the Appellant is a repeat offender having been charged in **Criminal Case No. 135 of 2014**, where he was sentenced to two (2) years imprisonment. In the course of the decongestion exercise, he was released on **27th November, 2014** but was required to perform unpaid public work for eight (8) months C.S.O. at Kyuso Probation Office following a Community Service Order (C.S.O). Serving sentence under the Community Service Order is envisaged to be advantageous to the offender who is supposed to undergo rehabilitation and consequently to be restored to a former reputation. However, he committed another offence before completion of sentence.
6. It is however, indicated that he has reformed having acquired life skills that may be useful in his lifetime. The officer expressed a challenge of changing his behavior of craving for quick money and dis-associating him with peers.
7. Principles of interfering with sentence were articulated in the case of **Bernard Kimani Gacheru vs. Republic, Criminal Appeal No. 188 of 2000** where the Court stated as follows:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

8. The trial Magistrate did take into consideration the fact of the Appellant having been a habitual offender and his conduct. Sentiments of the social officer clearly show that the Appellant is not suitable for release to the society at this point in time. The trial Court having acted on correct principles and the sentence in the circumstance being sufficient, I have no reason to interfere with it.
9. In the result, the Appeal lacks merit. Accordingly, it is dismissed.
10. It is so ordered.

Dated, Signed and Delivered at Kitui this 9th day of January, 2020.

L. N. MUTENDE

JUDGE