



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL APPEAL NO 33 OF 2018**

**BEN DICKSON LESIMALELE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Appeal from original Conviction and Sentence dated 1/09/2016**

**in Maralal PM Criminal Case No 1020 of 2016 – A Gachie, RM)**

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

1. The Appellant herein, **BEN DICKSON LESIMALELE**, was convicted upon his own plea of *kidnapping* contrary to **section 257** of the *Penal Code* (count 1) and *unlawful possession of an identity card belonging to another person* contrary to **section 14(1) (f)** of the *National Registration Act, Cap 107*. He was sentenced respectively to 7 years and 1 year imprisonment, the sentences to run concurrently. He has appealed only against the sentence in count 1. The Respondent has opposed the appeal.

2. I have considered the submissions of the Appellant and those of the Learned Counsel for the Respondent. I have also perused the court record.

3. The Appellant was a first offender who pleaded guilty. Nevertheless the court awarded him the maximum sentence prescribed for the offence in Count 1. No doubt there were aggravating circumstances, in that after some time when his mobile phone was switched off, the Appellant demanded a ransom of some KShs 170,000/00. The kidnap victim was a child of tender years, aged only 3 years. The positive side is that the child was not physically harmed and the demanded ransom was never paid.

4. The Appellant stated to this court that he is 22 years old, having been born in 1997. Having pleaded guilty, and being a first offender, the trial court should have cut some slack for this young man. I hold that the maximum sentence of seven (7) years imprisonment imposed by the trial court in count 1 was manifestly harsh and excessive in the circumstances of this case.

6. I will therefore allow this appeal against that sentence. I will set it aside and substitute therefor a term of imprisonment of five (5) years, effective from the date when he was sentenced by the trial court – 01/09/2016. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 17<sup>TH</sup> DAY OF JULY 2019**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 18<sup>TH</sup> DAY OF JULY 2019**