

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 179 OF 2018

GODWIN LITUNDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment, conviction and sentence of

Hon. H. Wandere– SPM delivered on 16th November, 2018 in the Chief

Magistrate’s Court at Kakamega in Criminal Case No. 4465 of 2016, Republic vs Godwin Litunda)

JUDGMENT

1. During the hearing of the appellant’s appeal on 4th September, 2019, the appellant abandoned his appeal against his conviction in respect of the offence of robbery with violence contrary to section 295 of the Penal code as read with Section 296 (2) of the Penal Code. (Cap 63) Laws of Kenya. He then proceeded with his appeal against his sentence of twenty (20) years imprisonment
2. In support of his appeal against sentence, he has urged this court to take into account that he was a first offender. He has also urged the court to take into account that he is a young man aged 28 years old and that if he were to serve the sentence of twenty (20) years imprisonment, he may be ruined. Finally he has submitted that the said sentence is harsh and excessive.
3. Furthermore, the appellant has also urged the court to take into account that he is also the breadwinner of his crippled mother, who does not do any work.
4. Ms. Rotich for the state has supported the sentence, which she submits is proper.
5. In imposing the twenty (20) years of imprisonment, the trial court took into account that the appellant was a first offender and his mother was a cripple, who depended upon him. The court also took into account that the appellant had been in custody for a long period.
6. The stolen properties were all recovered except for the eggs. It is clear that this was not taken into account by the court in sentencing the appellant. It was a mitigating factor.
7. Sentencing is a matter for the discretion of the trial court. This court is only entitled to interfere with the exercise of that discretion if certain matters were ignored by the trial court. I find the trial court ignored to take into account that all the stolen properties were recovered except the eggs. In the circumstances, I find that the trial court did not exercise its discretion properly.
8. In the light of the foregoing considerations, I hereby quash the sentence of twenty (20) years imprisonment. In its place I impose a sentence of 8 years imprisonment, which the appellant has now to serve.

Judgment signed, dated and delivered in open court at Kakamega this 4th day of September, 2019.

In the presence of the appellant and Ms. Rotich for the State.

J.M. BWONWONG’A

JUDGE