



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRA NO. 7 OF 2017

VINCENT KIMATU MWOLOLO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

INTRODUCTION

1. The Appellant was charged with stealing contrary to section 281 Penal Code.
2. Particulars being that on 11/04/2011 at Malivani Village Wote Location, Makueni District within Makueni County being a servant to George Nthenge Katumo stole one motorcycle Reg. No. KMCH 737F Make Jialing valued Kshs. 85,000/= the property of George Nthenge Katumo.
3. The Appellant pleaded guilty and was sentenced to serve 7 years imprisonment.
4. Being aggrieved by that verdict, the Appellant lodged petition and grounds of Appeal where he impugns sentence to be excessive.
5. The court will therefore focus on the sentence meted out to the Appellant.
6. The record from the trial court show that on 20/08/2015, the Appellant was taken to court for plea whereof he pleaded not guilty.
7. When the matter came for mention on 29/09/2015 he changed the plea and admitted the offence thus convicted of the offence charged.
8. The facts given were to the effect that on 11/04/2011 the accused went to George Nthenge Katumo in Paradiso and took him to church, he was then given motorcycle to operate and give him Kshs. 300/= per day.
9. After dropping the complainant he never communicated again. He later made a report at police station that his KMCH 734F Jiang valued at Kshs. 85,000/= disappeared with accused and the complainant then conducted his investigation and found the accused had sold the motorcycle in Mlolongo. He went into hiding until July 2015.
10. On 18/08/2015 he came back and was arrested at Chemole Trading Centre and escorted to Makueni police station. Motorcycle was never recovered and he was consequently charged. The logbook and receipt were produced as Exh 1.
11. The Court notes that the Reg No. in the charge sheet varies with the one in the facts that is KMCH 734F.
12. However a copy of the logbook which is on the record shows KMCH 737F corresponds with one in the charge sheet. However there is no issue raised on that.
13. When Appellant was given chance to mitigate, he only stated “look at both sides.”
14. The prosecutor stated that there was no previous record implying possibly accused was a first offender.
15. However when the court came to sentencing, the court awarded Appellant 7 years imprisonment which under Section 281 of the Penal Code Cap 63 LOK is the maximum sentence.
16. No reason was stated for awarding the maximum sentence. However the court notes that the motorcycle was never recovered and the

Appellant never accounted for the proceeds for sale of the motorcycle.

17. When called to mitigate the Appellant never mitigated rather than saying “look both sides.” He never showed any remorse or repentance.

18. In the provisions No 23.8 of the Judiciary policy guidelines on sentencing, the element of mitigating circumstances include; **(7) being first offender and (10) pleading guilty at the earliest opportunity and cooperation with prosecution and police.**

19. Provisions 23.9(2) states that the effect of mitigating circumstances is to lessen the term of custodial sentence.

20. Therefore, taking into account that the Appellant pleaded guilty and was a first offender, the court ought to have given him a slightly lesser sentence.

21. The court therefore makes the following orders:-

1) The sentence is set aside.

2) The court sentences appellant to 3 years imprisonment to run from the date of arrest.

SIGNED, DELIVERED THIS 5TH DAY JUNE, OF 2018, IN OPEN COURT.

.....

C. KARIUKI

JUDGE