



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARSEN**

**CRIMINAL APPEAL NO 27 OF 2016**

**PETER WANJOHI .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Being an appeal from the judgment and sentencing of Hon. J.K Ndengeri, Resident Magistrate in Lamu Criminal Case No. 96 of 2014 delivered on 19/11/2014)

**JUDGMENT**

1. The appellant Peter Wanjohi Wanjiru was the 2<sup>nd</sup> accused in Lamu criminal case No. 96 of 2014. In count I, he was charged along with surprise Sikudhani Kazungu (1<sup>st</sup> accused) with the offence of stealing a Motor vehicle contrary to section 278A of the Penal Code. The particulars of the offence were that; on the 8<sup>th</sup> March 2014 at around 4.00am at Kabaoni trading centre of Mpeketoni in Lamu West District within Lamu County, jointly with another not before court stole a motor cycle registration number MD 625K F5781G 81909595 and Engine No. AF 5G 81909595 valued at Kshs. 68,000/= the property of Samson Fikir Bayo.
2. The 1<sup>st</sup> accused faced a second charge of escaping from lawful custody contrary to section 123 as read with section 36 of the Penal Code. He pleaded guilty to both counts and was convicted. Being a minor he was committed to Shimo la Tewa Borstal institution for 3 years.
3. At the conclusion of the trial the appellant was convicted and sentenced to serve 3 ½ years imprisonment.
4. I have reviewed the evidence tendered in the lower court with respect to the present appeal. I have no doubt in my mind that the charge against the appellant was proved to the required standard. The prosecution tracked him to the bush where he, together with the 1<sup>st</sup> accused, had hidden the motor cycle. His co-accused admitted the offence and was convicted on his own guilty plea.
5. The appellant has stated in his submissions that the owner of the motorcycle framed him because of a grudge. His submission however is not supported by any evidence and does not in any way cast doubt on the strong prosecution evidence. My finding is that the conviction was safe and the sentence appropriate in the circumstances.
6. In the course of this appeal an issue arose over the sentence being served by the appellant There is nothing in the sentence to show whether the court took into account the fact that the appellant was already serving sentence in criminal case No. 367/2013. The court did not indicate that the present sentence would run subsequent thereto. The prosecutor had informed the court that the appellant had been convicted in criminal case No. 367/2013 while the appellant told the court that he was serving a sentence which he would complete in 2016 He also prayed for leniency stating that he did not have a father.
7. The criminal file No. 367/2013 was not availed to the court during this appeal. However, prosecution counsel informed the court that from records held in prison, the appellant was sentenced to 3 years on 10/10/2014 in the offence of breaking into a building while in criminal case No. 96/2014 which is the subject of the present appeal, he was sentenced on 26/11/2014 to serve a 3 ½ year period.
8. Without remission the appellant must have completed his 1<sup>st</sup> sentence in October, 2016 and started on the 2<sup>nd</sup> sentence which he has now served 2 years. While I uphold the conviction I consider the period served sufficient.
9. The appellant is set at liberty forthwith unless otherwise lawfully held.

Orders according

*Judgment delivered dated and Signed at Garsen on 19<sup>th</sup> day of November, 2018.*

**R.LAGAT KORIR**

JUDGE

**In the presence of**

.....Court Assistant

.....For Appellant

.....For the Respondent