



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 33 OF 2016

ROBERT THURANIRA APPELLANT

versus

REPUBLIC..... RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. F. W. MACHARIA – PRINCIPAL MAGISTRATE dated 21st November, 2015 in Nanyuki Chief Magistrate’s Court Criminal Case No. 373 of 2013)

JUDGMENT

1. **ROBERT THURANIRA**, has appealed against sentence which followed his conviction before the Nanyuki Chief Magistrate’s court, after trial, on three counts. On the first count the appellant was charged with the **offence of breaking and stealing contrary to section 306(a) of the Penal Code Cap 63**. On the second count he was charged with the **offence of assault causing actual bodily harm contrary to Section 257 of Cap 63**. On the third count he was charged with **unlawful possession of cannabis sativa contrary to section 3(1) as read with section 2(a) of The Narcotic Drugs and Psychotropic Substance (Control) Act Cap 245**. After finding the appellant guilty of the above offences the trial court sentenced him to 1 year imprisonment in respect to count one, 4 years on count two and 1 year for count three. Those sentences were ordered to run concurrently.

2. The appellant presented three grounds in support of his appeal against sentence. He stated that he was a first offender; He had attained grade 2 in carpentry; and he had been reformed while in prison.

3. The facts surrounding the appellant’s conviction were that on 27th May 2013 the appellant assaulted his father after his father questioned him about missing fertilizer from the father’s store. The assault occurred when The appellant told his father that he would show his father where the fertilizer was and when his father approached him he assaulted him. This is what his father stated in evidence:-

“I went to the store to fetch the fertilizer but it was missing. We went to the farm. My son the accused (appellant) came and told me that he would kill me. I was in shock because he was my son. He told me he knew where the fertilizer was. I went near where he was. He kicked me on the hip and I was in a bit of pain. I fell down and he sat on me and started to struggle me. My family members came to my rescue. The neighbour gave me a rope and we tied him up.”

On being cross examined by the appellant the father stated thus:-

“You assaulted me at around 9.30 a.m. There were many people who witnessed. They were about 50 of them but you threatened to kill them if they ever testified against you. You

have even threatened to come and kill me after you are released from jail. I am afraid for my life..... You wanted to kill me.”

4. Appellant was apprehended with help of the neighbours and taken to the police. While under the police custody he was found to have in his pocket narcotic (bhang).
5. The farm worker of the family in his testimony stated that the empty bag of the fertilizer was recovered from the appellant's house.
6. It is in the background of those fact that this court will consider the appellant's appeal against sentence.
7. The following two cases will guide this court as it considers this appeal.

(a) MACHARIA vs REPUBLIC (2003) KLR 115, viz:-

“The court does not alter a sentence on the mere ground that if the member of the court had been trying the appellant, they might have passed a somewhat different sentence The court will also not ordinarily interfere with the discretion exercised by a trial judge unless as was held in James vs Republic (1950) EA 147. It is evidence that the judge has acted upon some wrong principles or overlooked some material facts.”

(b) REPUBLIC vs JAGANI & ANOTHER (2001) KLR the court in considering the purpose of sentencing stated thus:-

“The purpose of a sentence is usually to disapprove or denounce unlawful conduct as a deterrent to deter the offender from committing the offence to separate offenders from society if necessary to assist in rehabilitation of offenders, and in retribution by providing for reparation for harm done to victims in particular and to society in general It is also seen as promoting a source of responsibility in offenders.”

8. The trial court in passing sentence against the appellant stated thus:-

“I have perused the probation report. The accused (appellant is said to be hard headed and keep on threatening to kill his father. Neither the community or family want him back in the community. The accused is said not to be remorseful. I find custodial sentence would best rehabilitate the accused person.”

9. This court has taken into account the circumstance under which the appellant committed the offences. The court has also perused the probation report prepared prior to sentencing. The appellant in this court's view needs to continue serving his prison sentence so that he is deterred from offending again. In this court's view the continued incarceration of the appellant will assist in his rehabilitation. With that view the **appellant's appeal against sentence is dismissed. The trial court's sentence is confirmed.**

DATED AND DELIVERED THIS 25TH DAY OF JANUARY 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Robert Thurania

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE