



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
CRIMINAL APPEAL NO. 91 OF 2012

PETER WAKHUNGU WANONYI.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(From Original Conviction and Sentence in Criminal Case No. 323 of 2012 of the Principal Magistrate's Court at Lamu – J.M. Munguti, PM)

JUDGEMENT

The appellant was charged with the offence of cutting down crops of cultivated produce contrary to section 334 (a) of the Penal Code. The particulars of the offence were that the appellant on 27.7.2012 at Mawiyoni area in Lamu West District within Lamu County, willfully and unlawfully cut down crop of cultivated produce, to wit 43 mango trees, 20 guavas, 86 coconut trees, 20 lemon trees, 5 cashew nut trees, 3 “mukungu” trees all valued at Kshs.800,000/= the property of Ali Mohamed Hilal.

The appellant pleaded guilty to the charge and was sentenced to 10 years imprisonment without the option of a fine. The grounds of appeal are that the appellant is remorseful, that the facts as read were contradictory and made the proceedings to be a mistrial. That the appellant is a first offender and the 10 years imprisonment sentence is excessive in the circumstances. In his written submissions, the appellant submit that he is seeking leniency as he did not waste the time of the court and he pleaded guilty. While in prison he has completed the Kenya certificate of primary education and he intends to acquire skills from a youth polytechnic. The sentence is excessive and the circumstances which led to the commission of the offence were not considered.

The state opposed the appeal and submit that the conviction is proper. The prosecution asked for five days to get a report. The case was adjourned for that period before the facts were read to the appellant. The appellant pleaded guilty once again. The court process was proper and the conviction is safe.

The record of the trial court indicate that the appellant was arrested on 28.7.2012. He was taken to court on 30.7.2012 when the plea was taken. The appellant pleaded guilty to the charge. The prosecution requested for adjournment for 5 days but the court granted only two days. The case was mentioned on 1.8.2012. The prosecutor read over the facts. The facts were as follows: -

On 27.07.2012 at 5.00 pm. The complainant Ali Mohammed sent one of his servants by the name Abdulwahid to visit the farm where he has planted various agricultural crops within Lamu Island. (the farm worker) on reaching the farm he received information that the accused had been

employed as a worker. There was a report that the accused had invaded the farm armed with a panga and proceeded to destroy various crops. The complainant filed a report with the police after confirming he had damaged his crops. The accused was arrested as he was planning to flee. He had bought a ticket and boarded a bus to go to Mombasa.

Officers at Witu Road Block mounted a road block and managed to arrest the accused person. Accused was returned to Lamu where these charges were preferred.

Police visited the farm which measures 3 ½ acres. An agricultural officer assessed the damage and prepared his report. Report dated 30.7.2012 was produced as exhibit. The total value of the destroyed crops is Kshs.751,000/=

The appellant pleaded guilty to the facts. The trial court called for a Probation Report. On 12.9.2012 the trial court convicted the appellant to 10 years imprisonment.

Section 334 of the Penal Code provides for the sentence of 10 years imprisonment for the offence of setting fire or cutting down crops. The offence is categorized as a felony. The charge sheet indicate that the value of the crops was Kshs.800,000/=. The facts were read to the appellant and the value of the destroyed crops was given as Kshs.751,000/=. I have seen the report from the Ministry of Agriculture, Lamu Agricultural Extension Office dated 30.7.2012. From that report the exact value of the crops is Kshs.151,200/=. The rest of the money comprise of Kshs.240,000/= for one farm security worker for sixty months at the rate of Kshs.4,000/= a month. There is also Kshs.360,000/= being the cost of a farm manager's salary for sixty months at the rate of Kshs.6,000/=. The cost of the two employees is Kshs.600,000/=. During mitigation, the appellant stated that the complainant was his employer and he had not been paid for four months.

Given the record of the trial court I do find that the conviction was proper as the appellant had all the time to change his plea. He pleaded guilty to the charge and the facts were read after 2 days. He could have changed his mind and pleaded not guilty. The plea was therefore unequivocal and the conviction is proper.

On the issue of sentence, I do find that although it is within the law, the same is excessive given the circumstances of the case. The cost of the damaged crops was not Kshs.800,000/= as per the charge sheet. Most of the computed costs involve salaries to a farm worker and a farm manager. The trial court was convinced that the damage caused was quite high and that is why it imposed a non-custodial sentence. There is no evidence that there was a farm manager employed. There was also the Probation Officer's Report which indicate that the appellant comes from Mwamba Village in Lugari Kakamega County and he had no permanent place in Lamu. Being a first offender, I find that the sentence is excessive. The appellant was sentenced to serve 10 years imprisonment on the 12.9.2012. He has now served over four years in prison. I do find that to be enough punishment.

In the end the appeal on conviction is disallowed. The appeal on sentence is allowed. The 10 years imprisonment is set aside and is hereby replaced with the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

Dated and delivered in Malindi this 20th day of February, 2017.

S.J. CHITEMBWE

JUDGE