



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL APPEAL NO. 151 OF 2016

JOSEPH GITAU KARIRI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Gatundu Senior Resident Magistrate's Court Criminal Case No. 484 of 2011 by D. M. Ndungi Ag. S R M on 24/06/15)

J U D G M E N T

1. The Appellant, **Joseph Gitau Kariri**, was charged with the offence of **Demanding Property by Written Threats**, contrary to **Section 299** of the **Penal Code**.
2. The brief facts giving rise to the charge were that on the **15th September, 2011** a letter addressed to **John Ndanyo Gitau** was delivered to his home. The content of the letter was a demand of **Kshs. 50,000/=**. Failure to give the money would result into his family members being kidnapped and a ransom of **Kshs. 2 million** demanded. On **23rd September, 2011** a second letter was found at the gate. The demand was for **Kshs. 80,000/=**. The matter was reported to the Criminal Investigation Directorate which investigated and arrested the Appellant. Subsequently he was charged. He was taken through full trial, found guilty, convicted and sentenced to serve **four (4) years imprisonment**.
3. Being dissatisfied with the conviction and sentence he appealed.
4. At the hearing of the Appeal, the Appellant who was unrepresented abandoned the Appeal against the conviction and mitigated on sentence. He submitted that he was a first offender, he has undergone rehabilitation and acquired skills that will assist him take care of his family.
5. In response, learned State Counsel **Ms. Maundu** submitted that the sentence imposed was fair considering that the Act provides for a sentence of **fourteen (14) years imprisonment**. However, she left it to the Court to exercise its discretion.
6. I am duty bound to reconsider what is on record bearing in mind that I did not hear the Appellant mitigate on sentence in the Lower Court and then come up with my own determination.
7. The principles upon which an Appellate Court may interfere with sentence imposed by the Lower Court were stated in the case of **Ogola s/o Owoura vs. Reginum (1954) 21 270** thus:

“The principle upon which an appellate court will act in exercising its jurisdiction to review sentences are firmly established. The court does not alter a sentence on the mere ground that if

the members of the Court had been trying the Appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James vs. Republic (1950) 18 EACA

147.

“It is now settled law that sentence is a matter of discretion of the trial court and must be based on the facts and circumstances of each case. An appellate court will not normally interfere with sentence unless the sentence is manifestly excessive or is based on wrong principles.”

8. A sentence meted out by a Court should be just and proportionate to offence committed.

9. A person who commits the offence of **Demanding Property by Written Threats** is liable to imprisonment for **fourteen (14) years**. In the instant case the Appellant was a first offender. The learned trial Magistrate in an endeavour to get evidence in mitigation that would inform him of which sentence to pass, gave the Appellant the opportunity to present the same. He had nothing to state which was an indication of not being remorseful.

10. The sentence meted out was legal as it was proportionate to the offence committed. In the result, the Appeal lacks merit and is hereby dismissed.

11. It is so ordered.

Dated, Signed at Kitui this 20th day of April, 2017.

L. N. MUTENDE

JUDGE

Dated, Signed and Delivered at Kiambu this 12th day of June, 2017.

PROF. J. NGUGI

JUDGE