

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL NO. 76 OF 2016

(Appeal originating from the sentence by Hon. K.ONESMUS SRM in Nyeri CR. CASE NO.706 of 2016)

SAMWEL MWANIKI KAHINGO.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged with the offence of stealing by servant contrary to section 281 of the penal code. The particulars were that between March and September 2015 at Maragi village in kieni west district within Nyeri County in the republic of Kenya the appellant being employee of paul Muchgia Wambugu stole sonny video camera, stapler, nokia phone type 6070, two packets of staples, power inverter, extension cable, barber machine, battery charger all valued at kshs 33,495 which came into his possession by virtue of his employment.

The alternative charge was the offence of handling stolen goods contrary to section 322(1)(2).particulars are that the appellant otherwise than in the course of actual stealing, he dishonestly retained the above items listed in the main charge knowing or having reason to believe them to be stolen.

The appellant was found guilty and convicted after full trial. He now appeals on sentence alone.in his submissions the appellant stated that he was a first offender and that he developed poor health after the sentence. He prayed for a lesser sentence or a non-custodial sentence

Ms. Mwaniki for the state submitted that the state is not contesting the appeal on sentence. She submitted that section 281 of the penal code under which the appellant has been convicted provide for a sentence of 7 years and that there is no minimum sentence for the offence. She further submitted that the court has discretion to determine the appropriate sentence. She said that the appellant was sentenced to 5 years imprisonment which is close to 7 years and that she agrees it is excessive especially that during mitigation the appellant was a first offender remorseful, and property being valued at kshs 33,495.

I have perused the lower court record. I confirm from the record that the appellant was a first offender.in mitigation he said he will never take anything from any person. The court considered that he is a first offender and his plea for leniency but considered the fact that he abused trust bestowed on him by his employer. I agree with the trial magistrate that the offence is serious but bearing in mind the fact that the appellant is a first offender and the fact that he promised not to commit such an offence again, I find the sentence imposed excessive. From the foregoing I do reduce the sentence to 18 months imprisonment.

Dated, signed and delivered at Nyeri this 9th day of June 2017

RACHEL NGETICH

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HIGH COURT JUDGE