

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 54 OF 2016

ROBERT MUSYOKA..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

*(Being an appeal from the original conviction and sentence in the Chief Magistrate's Court at Kibera
Cr. Case No. 5534 of 2014 delivered by Hon. J. Kamau (RM) on 23rd March, 2016)*

JUDGEMENT

Robert Musyoka, the Appellant herein was charged with the offence of preparation to commit a felony contrary to **Section 308(1) of the Penal Code**. It was alleged that on the 6th December, 2014 at around 1.30 a.m., at Nkoroi Ongata Rongai Township within Kajiado County with another not before court was found armed with dangerous weapons namely; a metal bar and a knife in circumstances that indicated that he was so armed with the intent to commit a felony namely stealing.

After the trial the Appellant was found guilty and convicted accordingly. He was sentenced to serve seven years imprisonment. Being dissatisfied with both the conviction and sentence, he preferred the present appeal. In his grounds of appeal filed on 2nd March, 2017, he appealed against both the conviction and the sentence. At the hearing of the appeal in court, he submitted that he would only appeal against the sentence. He urged the court to take into account that the sentence having been passed on 23rd March, 2016, he has been in prison for a period of more than one year. For the period the trial was going on, he remained in custody because he could not afford the bond terms. In addition, he urged the court to consider that he was a young man aged 28 years married with one child. He also took care of his two younger siblings. He also pleaded that he was sick after a fall that injured his back.

Learned State Council Ms. Kimiri in opposing the appeal noted that the sentence imposed was the minimum which this court could not vary. Therefore, the Appellant could only benefit from the period he remained in custody during the trial. Furthermore, prisons give remission of sentences which he shall also benefit from.

I have accordingly considered the respective submissions. Under **Section 108(1) of the Penal Code** any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than 15 years. Accordingly, the sentence imposed was the minimum provided by the law and therefore, reasonable. I thus concur with the learned State Counsel that the Appellant in this appeal can only benefit both from the period he remained in custody during the trial and by the remission offered by the prison.

In the upshot, i find and hold that the appeal has no merit and the Appellant must serve the minimum sentence passed. However, the said sentence shall run from 8th December, 2014 the date on which he took the plea. The appeal is accordingly dismissed.

DATED and DELIVERED this 17th day of **July, 2017**.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:

1. *Appellant in person*
2. *M/s Sigei for the Respondent.*