

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO.110 & 112 OF 2014

(An Appeal arising out of the conviction and sentence of HON. C.N. ONDIEKI - RM delivered on 15th August 2008 in Kibera CM. CR. Case No.1715 of 2013)

PETER KARIUKI RURIITHI1ST APPELLANT

JOSPHAT MWANGI KAMAU.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellants, Peter Kariuki Ruriithi and Josphat Mwangi Kamau were charged with the offence of **stealing a motor vehicle** contrary to **Section 278A** of the **Penal Code**. The particulars of the offence were that on 25th May 2013 at Kiserian in Kajiado County, the Appellants, jointly with others not before court, stole a motor vehicle make Toyota Hiace Registration No.KBL 155X valued at Kshs.1 million, the property of Ayub Ngugi John. When they were arraigned before the trial magistrate's court, they pleaded not guilty to the charge. After full trial, they were convicted as charged and sentenced to serve five (5) years imprisonment. The Appellants were aggrieved by their conviction and sentence. They filed an appeal to this court.

Although in their petitions of appeal the Appellants appealed against both conviction and sentence, during the hearing of their appeals (which were consolidated) the Appellants abandoned their appeals on conviction and instead mitigated on their sentences. They told the court that they were remorseful, that they had learnt their lesson in the period that they had been in prison, that they had been rehabilitated and would not be repeat offenders. They urged the court to take into consideration that they were in remand custody for a period of more than one (1) year before their conviction by the trial magistrate. They had learned skills while in prison which will make them useful members of the society upon release. Ms. Aluda for the State was not opposed to the Appellants' plea for reduction of sentence. She submitted that the motor vehicle that was the subject of the case was recovered.

This court has carefully considered the plea by the Appellants for reduction of sentence. As was conceded by Ms. Aluda, the motor vehicle that was the subject of the theft charge facing the Appellants was recovered. This court has taken into consideration the fact that the Appellants were in remand custody for a period of more than one year before they were convicted. They have been in prison for more than eighteen (18) months since their conviction. The court has also noted that the Appellants appear remorseful and have learnt from their incarceration that crime does not pay. They have learnt useful skills while in prison which they promised to deploy upon their release. The prison authority has, in respect of the 1st Appellant, written a report which confirms that he has indeed reformed.

In the premises therefore, this court finds favour with the Appellants' plea for reduction of sentence. The Appellants' custodial sentence is commuted to the period served. The Appellants are ordered set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 11TH DAY OF FEBRUARY 2016

L. KIMARU

JUDGE