



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 99 OF 2014

(From original conviction and sentence in Criminal Case No. 122 of 2015 of the CM Magistrate's court at Garissa – M. WACHIRA - CM).

RAJAB OMOTO NADASABA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant Rajab Omoto Nadasaba was charged in the Chief Magistrate's court at Garissa with stealing by servant contrary to section 281 of the Penal Code. The particulars of the offence were that on 28th and 29th January 2015 at Ministry of Public Health offices in Garissa Township within Garissa County in the Republic of Kenya, being a servant to Ministry of Public Health stole Kshs. 1,000,000/= (one million shillings) the property of the said ministry.

In the alternative he was charged with neglect/failing to prevent a felony contrary to section 392 of the Penal Code. The particulars of the offence were that on the same days and place being a watchman in the Ministry of Health offices and assigned to guard the said premises failed to use all reasonable cause to prevent theft.

He was recorded as having pleaded guilty. He was thus convicted of the main charge of theft by servant. He was sentenced to serve 3 years imprisonment.

Aggrieved by the decision of the trial court, the appellant has come to this court on appeal on sentence on the following grounds:-

1. That he is remorseful.
2. That he did not intend to steal.
3. That he did not understand the intensity (seriousness) of the case.
4. That the sentence imposed upon him was harsh and excessive and a punishment to him.
5. That he is sorry and with great regrets.
6. That he begs for leniency.

7. That he promises to change and advocate peace within the community.

The appellant also filed written submissions to the appeal, which I have perused and considered. During the hearing of the appeal, the appellant relied on the written submissions.

Learned Prosecuting Counsel Mr. Okemwa opposed the appeal. Counsel submitted that the appellant who

was an employee of the Ministry of Health, pleaded guilty to the charge and admitted the facts. Counsel emphasized that part of the money was found on him and part of the money even paid by him for Maslaha (traditional Somali arbitration).

Counsel submitted that the appellants mitigation was considered by the trial court and that he was treated as a first offence. Counsel urged the court to uphold both the conviction and sentence.

In response to the submissions of the Prosecuting Counsel, the appellant stated that he did not have anything to add.

This is an appeal on sentence. The appellant was convicted on his lower plea of guilty.

As a first appellate court, and especially as the appellant is a layman, I am duty bound to reconsider all the record to be satisfied on the correctness of both the conviction and sentence.

On conviction, the record clearly shows that the charge was read to him in English translated to Kisomali. He agreed to the charge. The prosecutor then summarized the facts, which he agreed to before he was convicted. He has not complained on appeal that he did not understand the language used or the proceedings in the trial court I find that the appellants plea of guilty was properly entered, and that the appellant was properly convicted.

On sentence, the appellant was sentenced to serve 3 years imprisonment. The maximum sentence for the offence was 7 years imprisonment.

Though sentencing is a discretion of the trial court, since 713,000/= of the Kshs. 1,000,000/= stolen by the appellant was recovered, and he pleaded guilty on first appearance in court and asked for forgiveness and was a first offender, I am of the view that the sentence of 3 years imprisonment, was harsh and excessive I will thus interfere with the sentence and reduce it to one and half (1 ½) years imprisonment, as I find that there were sufficient mitigating circumstances, including the recovery of a substantial part of the money.

Consequently, I dismiss the appeal on conviction. With regard to sentence imposed by the trial court, I set aside the sentence and order that the appellant will serve one and a half (1 ½) years imprisonment from the date on which he was sentenced by the trial court which was 2/02/2015.

Dated and delivered at Garissa this 2nd June 2016

GEORGE DULU

JUDGE