



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL APPEAL CASE NO. 64 OF 2014

DANIEL MWANGI WANGITHI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*Being an appeal from the judgment of the Principal Magistrate's Court (S. Jalango), Baricho
Criminal Case Number 60 of 2014 delivered on 18th December, 2014)*

JUDGMENT

1. **DANIEL MWANGI WANGITHI** the appellant herein was charged with 3 counts of offences through Baricho Principal Magistrate's Court Criminal Case No. 60 of 2014. The 3 counts were:

i. Being in possession of Government Stores contrary to Section 324 (2) as read with Section 36 of the Penal Code. The particulars contained in the charge sheet were that on 20th January, 2014 at Kiangwachi Trading Centre within Kirinyaga County the appellant was found with handcuffs of the National Police Service which was reasonably believed to have been stolen or unlawfully obtained.

ii. Preparation to commit a felony contrary to Section 308 of the Penal Code.

The particulars in that count were that in the same place and on the same date as indicated above the appellant was found with handcuffs in circumstances that indicated that he intended to commit a felony namely extortion.

iii. Impersonating a police officer contrary to Section 101 (1) (b) of the National Police Service Act No. 11A of 2011.

The particulars were that on the said date and place the appellant pretended to be a police officer for purposes which he would not by law be entitled to do on his own authority.

2. The Appellant denied the offences but after full trial the trial court found him guilty on all the three counts and convicted him. He was given the following sentences that were to run concurrently:-

In count I – 1 year imprisonment.

In count II – 7 years imprisonment.

In count III – 2 years imprisonment.

3. The appellant felt aggrieved on both conviction and the sentences and filed this appeal but at the hearing of the appeal he abandoned the appeal on conviction and stated that he wished to proceed on the appeal on sentence only. He contended that he had already served 1 year 7 months of the 7 year sentence and within that period he had reformed and learnt new skills which would help transform his life. In his view the trial court did not consider mitigating factors and added that if his term was to be reduced he would go out and engage in lawful activities like making sofa sets which is a skill he has since developed after engaging in vocational training while in prison. It is on the basis of this transformation that the Appellant now appeals to this Court to consider reducing his sentence.

4. The Respondent has opposed this appeal contending that the trial magistrate exercised his discretion in meting out appropriate sentences for the offences committed by the Appellant. The Respondent faulted the Appellant for not accounting for the period he had been in possession of the handcuffs and how long he had illegally used them against unsuspecting public. The State through the Office of Director of Public Prosecutions further faulted the Appellant for not demonstrating that he was remorseful and had reformed. The Appellant's acquisition of new skills in prison was contested on the ground that there was nothing exhibited to this court to prove the same.

5. It is true that sentencing, save where the law prescribes minimum sentence such as in sexual offences or in capital offences, is a discretionary matter for the trial that of course has to be exercised judiciously. An appellate court would not interfere with the exercise of such discretion unless it is shown that the trial court took into consideration irrelevant factor(s) or failed or omitted to take into consideration a relevant factor in the exercise of discretion. The Appellant in this case has contended that the trial court did not consider his mitigation. But I have looked at the record of proceedings in that court. The learned trial magistrate went to great lengths in considering mitigating factors. He reserved his sentence and called for a social inquiry report to inform himself whether the Appellant was deserving a non-custodial sentence after hearing his mitigation. The probation report was unfavourable to the Appellant and the trial court considered it and observed in his judgment that;

“the social inquiry report indicates that the accused is not suitable for a non-custodial sentence.”

I have looked at the report dated 16th December, 2014 and upon re-evaluation of the same, I am satisfied with the findings of the learned trial magistrate. The Appellant does appear that he was not a first offender because the report indicts him for a conviction in Criminal Case No. 1002 of 2013.

6. I have also looked at the sentences meted out in each of the counts that the Appellant was convicted with. The 1st count is a misdemeanor punishable in law (Section 36 of the Penal Code) by a term not exceeding 2 years imprisonment. The Appellant was handed one year by the trial court in that count pursuant to **Section 26 (2)** of the **Penal Code** which gives the trial court the discretionary power to met out a lesser sentence. The 2nd count carries an imprisonment of upto 10 years whereas the Appellant was given 7 years by the trial court. The 3rd count which was impersonating a police officer contrary to **Section 101 (b)** of the **National Police Service Act Cap. 84, Laws of Kenya**, carries a sentence of a fine not exceeding 1 million shillings or imprisonment not exceeding 10 years or both. The Appellant was given 2 years imprisonment on this count. The three sentences were directed to run concurrently which I find proper. The sentences meted out against the Appellant herein were lenient.

In the premises this Court finds no basis to intervene in the sentences handed out to the Appellant. I find no merit in this appeal. The same is dismissed.

Dated and delivered at Kerugoya this 8th day of September, 2016.

R. K. LIMO

JUDGE

8.9.2016

Before Hon. Justice R. K. Limo J.,

State Counsel Mr. Sitati

Court Assistant Naomi Murage

Appellant present

Interpretation: English-Kiswahili

Sitati for State present

Appellant in person present.

COURT: Judgment signed, dated and delivered in the open court in the presence of Daniel Mwangi Wangithi, the appellant in person and Sitati for State.

R. K. LIMO

JUDGE

8.9.2016