



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL APPEAL 158 OF 2015**

FRANCIS KAMONI WAMBUA.....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(Being an appeal against the original conviction and Sentence of the Senior Resident Magistrate's Court at Kilungu by Hon. P. Wambugu (SRM)) in Criminal Case No. 138 of 2015 dated 20<sup>th</sup> March, 2015)*

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**JUDGMENT OF THE COURT**

1. The Appellant was charged with offence of robbery which he committed on **18<sup>th</sup> March, 2015** at Kee market, Kee location in Makueni Sub-County, where he robbed **Eric Muthoka Mutua** of one wallet, one national identity card and cash of Kshs. 200= all valued at Kshs. 1,000=. On **20<sup>th</sup> March, 2015** the appellant pleaded guilty to the charge and was sentenced to six (6) years in jail. Not being satisfied with the sentencing the appellant on 14<sup>th</sup> September, 2015 made two simultaneous applications – one seeking leave to appeal out of time, and the other seeking for leniency on sentencing. The former application was not opposed by the State, and was allowed by the court, paving way for the hearing of the second application for leniency and review of the prison sentencing. The appellant's case is that he is now remorseful and that he pleaded guilty to the offence, and that he will never again commit an offence.
2. The prosecution opposed the application stating that the offence with which the accused was charged attracted a sentence of fourteen (14) years, and that the trial magistrate only sentenced the accused to six (6) years. The sentence was already too lenient and this court has no jurisdiction to interfere with the same.
3. I have considered the application and opposition to the same. In my view, the trial court's sentencing was already lenient. The appellant pleaded guilty to the charge which attracts fourteen (14) years in prison. In mitigation the appellant pleaded for leniency. The trial court considered that plea, and answered it positively by granting the appellant six (6) years instead of fourteen (14) years.
4. The appeal for further leniency is not justified. The appeal lacks merit and is dismissed. The appellant to serve the entire period and sentence pronounced by trial court.

**THAT** is the judgment of the court.

**DATED AND DELIVERED AT MACHAKOS THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2016.**

**E. OGOLA**

**JUDGE**

**In the presence of:**

Mr. Machogu for State

Accused present in person

Court Assistant – Mr. Munyao