



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 68 OF 2015

NICHOLAS MUTINDA KANINI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original Conviction and Sentence of the Principal Magistrate's Court at Kithimani by Hon. D.G. Karani (PM) in Criminal Case No. 340 of 2013 dated 13th March, 2014)

JUDGMENT OF THE COURT

1. The accused herein was charged with Robbery contrary to **Section 295** as read with **296(1)** of the **Penal Code**. The particulars being that on **10th June, 2013** at 21.40 hours at Matuu town within Yatta District of Machakos County robbed **Penina Mbula** of Kshs. 500,000 and immediately before the time of such robbery used actual violence to the said **Penina Mbula**.
2. The trial court convicted the appellant and sentenced him to serve seven (7) years in jail.
3. Not being satisfied with sentencing the appellant filed this appeal, urging the grounds that he is a first offender currently 37 years of age. To date he has served approximately 30 months of prison sentence of seven (7) years. He is married and blessed with four (4) children aged four, seven, ten and thirteen years. Before arrest and incarceration, he was the sole bread winner of his family now subsisting in poverty and misery. That after deep soul searching, he is remorseful and repentant for the offence he committed. That he has not been idle in prison and is currently in possession of a Grade III Government Trade Test in Building/Plumbing. That he is fully rehabilitated and have learnt his lesson, the value of hard work, honesty and integrity in one's life, and that he undertakes to eschew criminal acts in future. He implores the court to facilitate his early release so that he can alleviate the hardships of his dependants.
4. The appellant during oral submissions submitted that he is interested in mitigating the sentence only.
5. The State opposed the appeal on mitigation urging the court not to interfere with the discretion of the trial court unless it is shown that the sentencing was based on wrong principles of law, or that some important factors were neglected in assessing the same.
6. I have carefully considered the appeal. The sentence imposed of seven (7) years under **Section 295 and 296(1)** of the **Criminal Procedure Code** appears reasonable since under the above sentence a maximum sentence is fourteen (14) years. The mitigation of remorsefulness, or being sole bread winner or that the appellant will abide by the law in future are not enough grounds to enable this court to interfere

with the trial court's finding on sentence.

7. The appeal is dismissed. The appellant to serve the full sentence.

8. The appellant has the right to appeal to Court of Appeal.

DATED AND DELIVERED AT MACHAKOS THIS 15TH DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of;

Mr. Machogu for State

Appellant present in person

Court Assistant – Mr. Munyao