

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 116 OF 2013

MARK RICHARD ODHIAMBO OKITE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged with the offence of Theft of motor vehicle contrary to section 278 of the Penal Code. The particulars were that on the 4-12-2012 at Kisumu Township in Kisumu East District within Nyanza province jointly with others not before court stole motor vehicle registration number KAV 650R make Mitsubishi Pajero valued at Kshs. 1.5 million the property of Evans Ochieng Kokeyo.

The appellant after full trial was convicted and sentenced to 5 years imprisonment hence this appeal which is premised on 10 grounds. Briefly, the appellant and others approached the complainant with a view of hiring his motor vehicle for one day to undertake some coffee research work within Kakamega region. They agreed to pay the complainant a sum of Kshs. 3500/= for that day and that they were going to return the vehicle that evening. The appellant did witness the agreement produced as exhibit 2 as a guarantor. The vehicle was never returned and all the efforts to trace the culprits were unsuccessful. The appellant was arrested in Nairobi but his co-accomplices were never traced and neither was the vehicle recovered.

The grounds relied upon by the appellant are basically mitigation. In his submissions on appeal the appellant told the court that he was remorseful and having learned his mistakes he undertakes not to repeat again. He further told the court that he acted ignorantly and that he was misled.

The state opposed this appeal entirely. Mr. Mongare argued that the appellant knew what they were doing and that he was an accomplice in the act.

What is not in dispute herein is that the appellant does not deny the offence. His argument is that based on his reasons this court should reduce the sentence to non custodial one. This court thus being the first appeal is enjoined to analyse the case afresh with a view of arriving with a fresh and independent conclusion.

I have no doubt from the evidence on record that the appellant participated in the theft. As to whether he enjoyed the fruits from the theft is not known but it is him and his colleagues. Secondly, the vehicle has never been recovered and neither have the other accomplices been traced. If the appellant was genuine enough, he would have clearly assisted the complainant as well as the police in attempting to trace and apprehend the thieves. There is no evidence on record including his defence to suggest so.

This court shall only interfere with the sentence if the same was found to be manifestly excessive or too low or the trial court took into consideration extraneous matters before arriving at the said decision. Based on the above I do not think the trial court did any of the above. The maximum sentence expected in such offence is 7 years. 5 years period is within the bracket.

Does the appellant deserve a non-custodial sentence? I do not think so. The vehicle the subject matter was never recovered. The complainant underwent a loss while the appellant and his friends benefited from the said loss. In the premises and based on the above reasons this appeal is unmeritorious and the same is disallowed.

Dated, signed and delivered at Kisumu this 12th day of March, 2015.

**H.K.
JUDGE**

CHEMITEI