REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 32 OF 2015

NYAMAISIO WAMBUA..... APPELLANT

V E R S U S

REPUBLIC …..... RESPONDENT

(From the conviction and sentence in Garissa Chief Magistrate's Criminal Case No. 759 of 2014 – M. Wachira CM)

JUDGMENT

The appellant was charged with stealing from a person contrary to Section 279(a) of the Penal Code. The particulars of the offence were that on 15th April 2014 at Mororo area within Tana River County stole one mobile phone make Nokia 2730C-1 and cash Kshs 1,200/= all valued at Kshs 5,200/= the property of Agnes Kavete Mwangangi from the person of the said Agnes Kavete Mwangangi.

When the charge was read to him on the 22nd of April 2014, he denied the same. Later however, on 27th May 2014 he admitted the charge. The matter was then put off to 22nd May 2014 when the prosecution summarized the facts. When the facts were summarized, appellant admitted to them. He stated in mitigation that he was asking for leniency and was sentenced to serve 3 years imprisonment.

Dissatisfied with the decision of the trial court, the appellant has come to this court on appeal in a petition of appeal that raised grounds on sentence. He also filed written submissions and elected not to make oral submissions.

Learned Prosecuting Counsel Mr. Orwa opposed the appeal. Counsel submitted that the appellant initially denied the charge but later pleaded guilty. The plea was therefore unequivocal. Counsel submitted further that the grounds of appeal were mere mitigation which should have been made to the trial court. Counsel submitted also that the written submissions were misguided as the matter did not go to full trial.

This is an appeal from Criminal Proceedings in which the appellant was recorded as having pleaded guilty to the charge, and was thus convicted and sentenced. His grounds of appeal are on sentence alone. However his written submissions also appear to challenge the conviction of the trial court.

I have perused the trial court records. When the appellant admitted the charge, no plea of guilty was entered by the trial court. After the facts were read in court the appellant stated that the facts are correct. Again no conviction was recorded by the trial court. The trial court however, after allowing the appellant to say something in mitigation sentenced him to serve 3 years imprisonment.

In my view, a mistake was committed by the trial court in not entering a plea of guilty after the appellant admitted the charge. Another mistake was committed by the court in that after the appellant admitted the facts, he was not convicted of the offence. However he was sentenced. Considering the record in total, I find that the two mistakes on the record committed by the trial court did not occasion the appellant any prejudice, nor cause a miscarriage of justice. I find that the appellant admitted the charge. I also find that he stated that the facts were true. The facts disclose the offence charged. In my view therefore the conviction is safe. The plea taken was a proper plea of guilty which complied substantively with the requirements set down in the case of ***Adan -vs- Republic [1973] EA 445.***

With regard to sentence, on which the appellant has appealed, the maximum sentence for the offence is 14 years imprisonment. The appellant was sentenced to serve 3 years imprisonment. In my view the sentence imposed cannot be said to be either harsh or excessive.

I thus find that this appeal has no merits. I dismiss the appeal and uphold both the conviction and sentence of the trial court.

Dated and Delivered in Garissa this 5th day of October, 2015.

GEORGE DULU

JUDGE