



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT LODWAR

HIGH COURT CRIMINAL APPEAL NO. 10 OF 2015

(FORMERLY KITALE HIGH COURT CRIMINAL APPEAL NO. 16 OF 2015)

RASHID KAWAWA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

(Before Justice Stephen Riechi)

The appellant **Rashid Kawawa** was on 3rd day of July, 2014 charged before Hon. I.O. Odhiambo Resident Magistrate, with the offence of stealing Contrary to **section 275** of the penal code.

The particulars of the offence were that on the 2nd day of July, 2014 at 11.00am in civil servants quarters Lodwar in Turkana County stole a T-shirt, and Jerrycan of 20 litres all valued at Kshs.1200 the property of Sammy Korir.

The appellant pleaded guilty and was convicted. He offered mitigation and the learned Resident Magistrate sentenced him to serve five (5) years imprisonment. Dissatisfied with the conviction and sentence, the appellant filed self drafted petition of appeal dated 24th February, 2015 and annexed the grounds of appeal. In the grounds of appeal the appellant states that he pleaded guilty to the charge and that he is a father of 10 children who had lost (sic) their mother 7 years ago; that he prays for pardon as his children have dropped out of school and that he is remorseful for the offence he committed and promises hence forth to abide by the law.

The appellant filed written submissions in support of the appeal. He reiterated the grounds of the appeal and submitted that he is remorseful and prays for forgiveness and stated he did not commit the offence but only picked the alleged stolen items on his way home, from the bus station where he works. He prays that this court be pleased to reduce the sentence of five (5) years to a lesser term to be able to be set at liberty.

Mr. Kimathi counsel for the Republic/Respondent submitted that the sentence by the trial court was excessive as the appellant was charged with the offence of stealing contrary to section 275 penal code which attracts a maximum imprisonment term of three years. He therefore conceded to the appeal on sentence only, and urged the court to rectify the sentence only in accordance with the law.

The appellant was charged with the offence of stealing contrary to section 275 of the penal code. Section 275 penal code provides

“any person who steals anything capable of being stolen is guilty of a felon termed theft and is liable unless owing to the circumstances of the theft or nature of the thing stolen some other punishment is provided for imprisonment three years.”

The learned magistrate after convicting the appellant on his own plea of guilty and after hearing the appellant mitigation in sentencing stated.

“the court has considered the mitigation of the accused person. Court takes judicial role (sic) the offence of house breaking at civil services area is rampant. The accused is convicted on his own plea of guilty and sentenced to five (5) years imprisonment. Right of appeal 14 days”.

The offence for which the appellant was charged was stealing. However in the sentence the learned magistrate stated the offence as house breaking and therefore in my view was in error which led him to sentence the appellant to an imprisonment term which was excessive for the offence he was charged. The appellant was charged with the offence of stealing contrary to section 275. There were no particular circumstances which aggravated it to attract any other sentence than the one provided under section 275 of the penal code of imprisonment for three (3) years.

I note that the appellant pleaded guilty and was properly convicted. I do however find that the sentence of five (5) years imprisonment was unlawful. I therefore allow the appeal in sentence set aside the sentence of imprisonment for 5 years. I substitute the same with the sentence of three (3) years imprisonment. It is so ordered.

S N RIECHI

JUDGE

Dated at Lodwar this 5th day of October, 2015

S N RIECHI

JUDGE

Court – judgment read over and delivered in open court in the presence of appellant and MS Kigeli for Respondent this 7th day of October, 2015.

S N RIECHI

JUDGE

7/10/2015