



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

**CRIMINAL APPEAL NO.63 OF 2013 CONSOLIDATED WITH CRIMINAL APPEAL NO. 66
OF 2013**

PATRICK KARIUKI GICHABI1ST APPELLANT

PETERSON KARIUKI MURIUKI.....2ND APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

***(Appeal from the original conviction and sentence in Criminal Case number 481 of 2010 in the
principal Magistrate's Court at Kerugoya – HON. E.M. Nyaga (R.M)***

JUDGMENT

The appellants herein had been charged jointly in the principal Magistrate's court at Kerugoya with the following offences:

Count 1 - Burglary contrary to Section 304(2) and Stealing contrary to Section 279(g) of the Penal Code

Alternative charge - Handling Stolen Property contrary to Section 322(2) of the Penal Code.

Count 2 - Malicious Damage to Property contrary to Section 339(1) of the Penal Code.

After full trial before Hon. E.M. Nyaga (RM), the appellants were convicted of the alternative charge in which it had been alleged that on the 15th day of May 2010 at Mwea Town in Kirinyaga South District of the Central Province, otherwise than in the course of stealing, they dishonestly retained one motor cycle Registration No . KBE 479 Q make Fuon Blue in colour knowing or having reason to believe it to be stolen property.

Following the conviction, the appellants were sentenced to seven years imprisonment. It is against that conviction and sentence that they each filed their appeals separately which were consolidated during the hearing.

When the appeals came up for hearing, the appellants who were unrepresented chose to make oral submissions in which they abandoned their respective appeals against conviction. They each informed the court that they were only interested in pursuing their appeals against sentence.

The 1st appellant urged the court to review his sentence on grounds that he had learnt important skills in prison like masonry, guidance and counseling which he would utilize to get integrated into his community if his appeal on sentence was allowed.

The 2nd appellant on his part also urged the court to review his sentence saying that he had learnt masonry and carpentry skills while in prison and he was now a reformed man.

The state through learned state counsel Mr Omayo opposed the appeal against sentence on grounds that the sentence of seven years imprisonment was lawful since the offence of handling stolen property attracts a maximum sentence of fourteen years imprisonment ; that the fact that the appellants had learnt several skills in prison should not form a basis for reducing their sentences . He urged the court to uphold the sentence imposed by the learned trial magistrate.

I have considered the submissions made by the appellants and Mr Omayo for the state. I have also considered the circumstances surrounding which the appellants were arrested and prosecuted for the offence for which they were convicted.

They had been arrested in possession of a motor cycle Registration NO. KBE 479 Q valued at kshs 76,000 which had been stolen from the complainant house.

The principles upon which an appellate court can alter or review the sentence imposed by a trial court were enunciated by the Court of Appeal in MACHARIA VS REPUBLIC 2003 KLR 115 where the court stated the following:-

“ The court does not alter a sentence on a mere ground that if the member of the court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless as was said in James v R (1950)18 EACA 147 it is evident that the judge has acted upon some wrong principle or overlooked some material factors. To this we would also add a third criterion namely, that the sentence is manifestly excessive in view of the circumstances of the case R v Shershewsky (1912) C C A 28 TLR 364”.

I am alive to the fact that the penalty prescribed by the law for the offence for which the appellants were convicted is a maximum sentence of fourteen years imprisonment which means that the sentence of seven years imprisonment imposed upon the appellants in this case was lawful. But the record shows that the appellants were supposed to be treated as first offenders and in my view, a sentence of seven years for a first offender considering the nature and value of the property subject of the charges was rather harsh and excessive in the circumstances of this case.

The appellant's have to date served a period of three and a half (3 ½) years imprisonment. I find that this is sufficient punishment for the offence for which they were convicted.

I therefore allow the appeal against sentence, set aside the sentence imposed by the learned trial magistrate and substitute it with the period already served. Each appellant is to be set free unless otherwise lawfully held.

C.W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 14TH THIS DAY OF FEBRUARY, 2014 in the presence of:

The appellants

Mr Sitati for state counsel

Mbogo Court Clerk