



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 64 OF 2012

JOHN KILONZO MUTISYA APPELLANT

VERSUS

REPUBLIC

(Being an appeal from the sentence of Hon. H. Nyakweba (PM) delivered on 25/4/2012 in Kilungu Senior Resident Magistrate's Court Criminal Case No. 131 of 2011)

(Before Hon. B. Thurania Jaden J)

J U D G M E N T

1. The Appellant, **John Kilonzo Mutisya**, was charged with the offence of stealing of motor vehicle parts contrary to **section 279 (c)** of the **Penal Code**.

The particulars of the offence were that on the 14th day of September, 2011 at **Mavivye Junction**, along **Nairobi-Mombasa Road**, **Kiima Kiu Location**, **Malili Division** in **Mukaa District** within **Makueni County**, stole one battery **Serial No. 55D23LMF** black in colour from a motor vehicle Reg. No. **KBP 469 Q Toyota Rav 4** which was involved in an accident valued at Kshs.6,000/= the property of the **Late James Musyoka Mwanzia**.

2. When the Appellant was arraigned in court, he pleaded not guilty. The case proceeded to a full trial. The Appellant was convicted for the offence of attempted theft. The Appellant was sentenced to five (5) years imprisonment.
3. The Appellant was aggrieved by both the conviction and sentence and appealed to this court. However, during the hearing of the appeal the appeal, the Appellant withdraw his appeal on conviction and stated that he wished to appeal on sentence only. He submitted that the sentence meted out by the trial court was harsh and prayed for a more lenient sentence.
4. The appeal was opposed by the State. The learned counsel for the State submitted that the sentence was within the law and should not be interfered with.
5. Taking into account that the value of the stolen battery was 6,000/=, the sentence of five (5) years imprisonment was harsh and excessive. The Appellant was treated as a first offender. The trial magistrate ought to have considered other sentencing options. I opine that the trial magistrate ought to have called for a pre-sentence report to see if the Appellant was suitable for a non-custodial sentence.
6. The Appellant has been in custody since 24/4/12. The Appellant has therefore served over one year and two months of the sentence. I will reduce the sentence to the period already served. The Appellant is at liberty unless otherwise lawfully held.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 3rd day of July 2014.

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B. THURANIRA JADEN

JUDGE