



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 111 of 2007

CHARLES MACHARIA WAMBAIRE ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

*(Appeal from original Conviction and Sentence in the Chief Magistrate's Court at Nyeri in Criminal Case No. 2801 of 2005 dated 25<sup>th</sup> day of September 2006 by M. R. Gitonga – PM)*

J U D G M E N T

The appellant was charged with two others with the offence of Robbery with violence contrary to Section 296(2) of the Penal Code as well as alternative count of handling stolen goods contrary to section 322 (1) of the Penal Code before the Chief Magistrate's Court, Nyeri. He was acquitted after trial of the main count but convicted on the alternative count. Upon conviction as aforesaid, he was sentenced to 7 years imprisonment with hard labour.

The appellant however, appealed to this court against the said conviction and sentence. When the appeal came up for hearing the appellant applied to court to have the appeal proceed only on sentence. In other words, he wished to abandon the appeal on conviction. **Mr. Orinda**, learned Senior Principal State Counsel not objecting, the appellant's wish was granted and thereafter the appeal proceeded only on sentence.

The appellant complains that the sentence imposed of 7 years imprisonment plus hard labour was harsh and excessive. That he had since reformed and trained as a carpenter.

**Mr. Orinda**, learned Senior Principal State Counsel for the respondent did not share the appellant's concerns with regard to the sentence imposed considering the circumstances of the case. Indeed according to **Mr. Orinda**, the appellant was even lucky that he got away with that sentence when in fact he ought to have been sentenced to death since the ingredients of robbery with violence had been met.

I have jurisdiction to hear the appeal against sentence in terms of section 354(3) (b) of the Criminal Procedure Code. However I can only interfere with the sentence imposed by the trial court if I am satisfied that in arriving at the sentence, the trial court took into account irrelevant factors, the sentence imposed was illegal or manifestly harsh and excessive as to amount to a miscarriage of justice. See generally, **Ogalo s/o Owuor v/s Republic (1954) 19 EACA 270, James v/s Republic (1950) 10 EACA 143, Nilson v/s Republic (1970) EA 599 and Wanjema v/s Republic (1971) EA 493.**

The offence charged carries upon conviction a maximum sentence of 14 years. The appellant was however sentenced to 7 years being half of the maximum sentence. I think that considering the items involved and the circumstances of the offence, the sentence imposed appears to be manifestly harsh and excessive. Accordingly I will interfere with the sentence and hold that the sentence already served meets the end of justice. I would then allow the appeal on sentence, set aside the sentence of 7 years imprisonment plus hard labour imposed and substitute therefor with the sentence already served by the appellant. The result is that the appellant shall be released forthwith unless otherwise lawfully held.

*Dated and delivered at Nyeri this 3<sup>rd</sup> day of June 2009*

**M. S. A. MAKHANDIA**

**JUDGE**