

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Criminal Appeal 5 of 2009

MICHAEL MUTHEE MUAZI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(An appeal from the judgment of J.N. Nyaga SPM in Maua in Criminal Case No. 1152 of 2009

delivered on 27th day of March 2009)

JUDGMENT

The appellant was charged with the offence of resisting arrest contrary to section 253(b) of the Penal Code. When the charge was put to the appellant, the appellant responded, “*It is true.*” After the facts were read out, the appellant confirmed that the facts were correct. The court proceeded to convict the appellant on his own plea of guilt. He was said to be a first offender and in mitigation he pleaded for leniency saying that he had a family which relied upon him. The learned magistrate in sentencing the appellant for six months imprisonment stated that the offence was serious. The appellant has filed this appeal against conviction and sentence. In the first ground of his appeal, the appellant stated that the learned magistrate erred in law in convicting him on a plea that was unequivocal. In submissions, the learned counsel for the appellant stated that the facts that were narrated by the prosecution did not disclose an offence of resisting arrest. That argument was opposed by the learned state counsel who submitted that the facts did disclose an offence and that the appellant was barred from appealing against conviction by section 349. That section provides:-

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”

I have perused the facts narrated by the prosecution. The facts were that the appellant was stopped as he drove his motor vehicle registration No. KAY 465E a Toyota Hillux pickup. This was along Maua Meru road. When he stopped, the police officers inspected his vehicle. They found that he did not have an inspection sticker and the left side lamp was missing. They informed the appellant that he was under arrest. Prosecution continued narrating the facts as follows:-

“He resisted the arrest. They struggled with him. He was over powered. He was taken to Maua Police Station and charged.”

Those are the facts that the appellant confirmed were correct. The offence in which the appellant is charged was under section 253(b) of the Penal Code. That section provides as follows:-

“Any person who-

(a)

(b) Assaults, resists or willfully obstructs any police officer in due execution of his duty, or any person acting in aid of that officer;”

It is clear from that subsection that indeed the facts which were accepted as correct by the appellant fits the offence therein. For that reason, the learned state counsel was correct in his submissions that the appellant could not seek to appeal against conviction having pleaded guilty. Grounds No. 2, 3 4 and 5 relate to the sentence. The appellant in those grounds stated that the sentence was excessive, that the court failed to consider his mitigation that the court failed to give an alternative punishment and the learned magistrate failed to consider that he was a first offender. Section 253 of the Penal Code provides that when a person is convicted under that section he is guilty of a misdemeanor and is liable to a maximum sentence of five years. In this case, the appellant was sentenced to six months imprisonment. I am of the view that the sentence meted out to the appellant was not excessive to lead me to interfere with the same. For that reason, the appellant appeal is hereby dismissed.

Dated and delivered at Meru this 2nd day of October 2009.

MARY KASANGO

JUDGE