

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.170 OF 1996
(From original conviction and sentence of the Chief Magistrate's Court at Kisii in
criminal case No.1303 of 1995).

YUVENALIS MOTUKA MAGEKA APPELLANT

VERSUS

REPUBLIC RESPONDENT

Coram: Oguk, S.O. J

Mr. Masese for the Appellant

Mr. Orinda (State Counsel) for State

JUDGMENT:

The Appellant, Yuvenalis Motuka Mageka, was convicted by the learned District Magistrate, Kisii of the offence of Forcible detainer contrary to section 91 of the Penal Code. Upon his conviction, he was sentenced to serve 8 months imprisonment. His appeal to this court is against conviction and sentence.

I am satisfied that the appeal against conviction is without any merit as there was good and reliable evidence to the effect that the disputed land now belongs to the complainant, Latafali Jiwa Rajwani who has since transferred it to a company known as Nyakoe Quarry Ltd. Where he is a director. Although this land originally belonged to the appellant, he lost his title to that land when the same was sold in a public auction in the year 1987. The complainant was the purchaser at the said auction sale and the land was later transferred to him after the High Court had confirmed the sale and issued a vesting order.

All rights which the appellant could have had over that land were therefore extinguished upon registral thereof in the name of the complainant. He now remains on that land with his family as squatters. I am reluctant to use the word trespasser although that is the appropriate word. The appellant has 4 sons himself withheld on that land. They have 5 houses of which 3 are permanent. He has coffee and tea on that land. Probably all that was required, was to give the appellant reasonable time to vacate the said land. Since his land was sold in 1987, about 9 years have gone by and this in my view, is reasonable time.

The only reason why the Appellant has not vacated the land is probably because he has nowhere else to go but he never said so when put on his defence and chose to exercise his right to silence. It is therefore not open to this court to speculate any reason why the Appellant has not vacated the land and has prepared to resist any move to eject him out of the land when the police officers went there.

A case of this nature does not require any long custodial sentence except to reestablish the process of the law by reminding the appellant that he is violating the law.

I allow the appeal against sentence which I hereby reduce to 3 months imprisonment. In the result, the appeal against conviction is dismissed while the appeal against sentence is allowed to the extent stated herein above.

Dated and delivered at Kisii this 15th day of August 1996.

S.O. OGUKE

JUDGE