



IN THE COURT OF APPEAL

AT NYERI

(CORAM: GICHERU, OMOLO & LAKHA, JJ.A.)

CRIMINAL APPEAL NO. 18 OF 1996

BETWEEN

SIMON WANYIRI KAHIGA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Appeal from a conviction and sentence of the High Court of Kenya at Nyeri (Lady Justice Angawa)
dated 11th February, 1994*

IN

H.C.C.R.A. NO. 377 OF 1994)

JUDGMENT OF THE COURT

The appellant, Simon Wanyiri Kahiga, appeals this Court a second time. He was tried and convicted by the Resident Magistrate at Karatina on a total of six counts. Two of those counts charged him with personating a public officer contrary to section 105, one with false assumption of authority contrary to section 104, one with making a document without authority contrary to section 357(a) and two others with obtaining by false pretences contrary to section 313, all being under the Penal Code. Upon being convicted by the magistrate, the appellant was sentenced to two years imprisonment on the first four counts and one year imprisonment on the last two. The magistrate ordered that the sentences in counts one and two were to run concurrently, those in counts three and four were also to run concurrently while those in counts five and six were to run consecutively. Since the magistrate did not order that the sentences in counts one and two were to run concurrently with those in counts three and four, the result is that the appellant was sentenced to a total of six years imprisonment. His petition of appeal to the High Court which was drawn-up by prison authorities shows he is to serve six and a half years imprisonment. The appellant was treated by the magistrate as a first offender, though at the time he was sentenced, the appellant was serving a sentence for some offence.

The appellant, through the prison authorities, appealed to the High Court and at the top of his "Grounds of Appeal" he stated:-

"Your Lordship I do kindly beg to lodge my appeal against both conviction and sentence imposed upon me by the Resident Magistrate Court, Karatina."

He then listed six grounds of appeal all of which attacked the quality of the evidence that was adduced against him by the prosecution. There was no specific ground directed against the sentence though the heading of the petition, as we have seen, stated that the appeal was against the conviction and sentence. On 11th February, 1994, Angawa J. (Miss) certified under section 352(2) of the Criminal Procedure Code that she had perused the record and she was satisfied that the appeal had been lodged without any sufficient ground for complaint. The effect of that was that the appellant's appeal to the High Court was summarily rejected. Under section 352(2) Criminal Procedure Code, a judge of the High Court is entitled to reject an appeal summarily if he is of the opinion that the appeal has been brought on the ground that:-

“the conviction is against the weight of the evidence or that the sentence is excessive..... and it appears to the judge the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which would raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced.....”

It may well be that the appellant's ground of appeal to the High Court could be fairly summarised as amounting to no more than that his conviction was against the weight of the recorded evidence. But as we have pointed out, the appellant was a first offender and an effective sentence of some six years on such a person must be a circumstance which should or ought to lead a judge to the conclusion that the sentence should be reduced. We think that the learned Judge should at the very least have given the appellant an opportunity to address her on the sentence which appears to us, prima facie, to be excessive. We are of the view that the learned Judge ought not to have summarily rejected the appellant's appeal. That being our view of the matter, we allow this appeal, set aside the learned Judge's summary rejection and remit the appeal to the High Court with a direction that it admits the appeal to hearing and thereafter deal with it according to law. We so order.

Dated and delivered at Nyeri this 16th day of May, 1996.

J. E. GICHERU

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR