

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 77 OF 1987

LIHARO..... APPELLANTS

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

Appellant was charged on two counts, namely breach of the peace and willful damage to property and on conviction he was sentenced to 6 months imprisonment to run concurrently. In this appeal the appellant complains that the court clerk could not interpret English into Kimasai. The complaint in effect is that appellant did not understand the charge or the proceedings.

Upon looking at the record I observe that the appellant first pleaded not guilty on December 15, 1986. There was no indication at that time that he did not understand the charge or proceedings. He was then released on bond. On the trial date (February 17, 1987) he replied to the charges by saying "it is true" and pleas of guilty were then recorded. Again there was no indication either that the appellant did not understand the proceedings or that he requested an interpreter but was turned down. I therefore do not accept the complaint in grounds 3, 4 and 5 of his appeal. I am satisfied that his plea of guilty was unequivocal, but the fact disclosed do not in fact support the charge under count 2 ie the willful damage to property for which reason I will acquit the appellant on that charge. Consequently I uphold the conviction under count 1 only.

The sentence of 6 months is in my view excessive bearing in mind the appellant pleaded guilty to this minor charge and apologized to the complainant. He had obviously regretted the incident.

Consequently the sentence of 6 months imprisonment in respect of count 1 is set aside and substituted by such sentence as would secure the immediate release of the appellant from prison.

Order accordingly.

August 3, 1987

TORGBOR

JUDGE