

REPUBLIC OF KENYA

Mugo v Republic

High Court, at Nyeri April 22, 1985

Patel J

Criminal Appeal No 26 of 1985

(Appeal from the DM II at Karatina, J G Gichuru Esq)

Advocates Ndirangu for appellant Mugo for Republic the respondent

April 22, 1985, Patel J delivered the following Judgment.

The appellant was convicted for the offence of stealing by a servant c/s 281 of the Penal Code in criminal case no 2111 of 1984 DM II Karatina and sentenced to 10 months imprisonment on her own plea of guilty from which decision the appellant has appealed to this court.

Ground 1 says that the learned trial magistrate erred in misconstruing the appellants' acceptance of the interpreted facts as a plea of guilty. Ground 2 say that the trial magistrate erred in finding that the appellant had pleaded guilty to the offence charged while she had only admitted possession.

I will deal with these 2 grounds together. There is no substance in these 2 grounds of appeal. The plea of guilty was clearly unequivocal. When the charge was read over to her the appellant clearly said :

"It is true I stole Tumu Tumu Secondary School property worth Kshs 3080.

This is clearly unequivocal plea of guilty.

The facts were given as under by the prosecutor : "The accused is employed at Tumu Tumu Girls Secondary school as assistant house keeper. On 15.10. 1984 the Headmistress of Tumu Tumu girls secondary school received an information that the accused was selling some school properties. And that there was a gas cooker, a mattress now in the house ready to be disposed off. The Headmistress summoned her deputy and the school bazaar. They went into the accused's house where a mattress, one bed and a gas cooker were found. When accused was asked she was unable to say from where she got the items from. Police were summoned and went to the scene. When the police arrived there and started investigations. When they went with the headmistress in the store. They found 2 beds and two mattresses missing. They interrogated the accused. She volunteered to show where she had kept them with her boyfriend. They were recovered. Police arrested the accused and she was charged with this offence. The property worth Kshs 3080 were recovered and are before the court".

The court asked the accused if she admitted the facts of the case and she said she admitted all the facts of the case.

From this it is clear that there is no substance in any of the grounds 1 or 2.

The remaining 4 grounds are on sentence.

There is no substance in any of them. The maximum sentence for the offence c/s 281 of the Penal Code is

imprisonment up to 7 years. The appellant was given 10 months imprisonment which is not harsh or excessive at all. It was a most proper sentence in the circumstances. The learned magistrate took into consideration all mitigating factors said by the appellant.

He has not misdirected on the principal of sentence. There is no substance in this appeal at all.

So I dismiss it both against conviction and sentence.