

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CRIMINAL APPEAL NO 942 OF 1982

OTIENO APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted on his own plea of guilty of theft of a bicycle contrary to section 275 of the Penal Code (cap 63) for that he on September 11, 1982 at Muthangari Road in Nairobi Area stole a bicycle make Murrey 12 frame No D316646 valued at Kshs 2,000 the property of Nzuki Waita. Having pleaded guilty to the offence he was convicted by the learned chief magistrate. He was stated by the prosecution to be a first offender. The learned Chief Magistrate took that into account and the fact that he pleaded guilty but he said that the facts disclosed more serious offences of personating a police officer and robbery. On those grounds the learned chief magistrate sentenced him to the maximum for theft which is three years' imprisonment.

In the case of *Arissol v R* [1957] EA at page 449 F the East African Court of Appeal when considering the sentence stated

“It is unusual to impose the maximum sentence on a first offender and it would be wrong to depart from that rule because on the evidence she might have been convicted of a graver offence. We cannot feel satisfied that these matters were sufficiently considered by the learned Chief Justice and have therefore decided to allow the appeal ...”

In my view that is just what has happened in this case and the sentence is manifestly excessive.

Appeal against sentence therefore will be allowed to the extent that the sentence of three years' imprisonment will be set aside and a period of one year's imprisonment will be substituted. Appeal against conviction will be dismissed.

Dated and Delivered at Nairobi this 24th February, 1983,

D.C. PORTER

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Ag JUDGE