



**Kipkoech v Republic (Criminal Appeal E002 of 2023)
[2024] KEHC 1647 (KLR) (23 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1647 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CRIMINAL APPEAL E002 OF 2023
JR KARANJA, J
FEBRUARY 23, 2024**

BETWEEN

DENIS KIPKOECH APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. Upon his appearance before the Resident Magistrate at Kapsabet on the 14th December 2022 for the offence of theft of a motor vehicle Contrary to Section 268(1) as read with Section 218 (a) of the [Penal Code](#), theft, Contrary to Section 268 as read with Section 275 of the [Penal Code](#) and obtaining by false pretence, Contrary to Section 313 of the [Penal Code](#), the Appellant, Daniel Kipkoech pleaded guilty to all the three counts.
2. Accordingly, a plea of guilty on all the three counts was entered against the Appellant and after confirming the truthfulness of the facts as read to him by the prosecution, he was found guilty on all the three counts and convicted. A sentence of six (6) years imprisonment was imposed on him on Count one while a sentence of three (3) years imprisonment was imposed on each of the last two counts. The sentence were to run concurrently.
3. Being aggrieved, the Appellant filed the present appeal on sentence only even though the grounds contained in his petition of appeal filed herein on 5th January 2023 indicated that he did not plead guilty and that the appeal was both on sentence and conviction. These grounds are clearly inconsistent with his written submission which strongly suggested and confirm that this appeal is essentially on sentence and ought to be treated as such.
4. A perusal of the trial court’s record by this court showed that there was nothing irregular with the plea taking process which ended up with an unequivocal plea of guilty on all the three counts by the appellant.



The guidelines set out in the case of *Adan vs. Republic* (1973) EA 445, on plea taking were adhered to by the trial court.

5. The Appellant cannot therefore be heard to say that the plea was not properly taken hence, equivocal and incapable of resulting in a conviction. He contended in his submissions that he pleaded guilty and implied that his complaint was not on conviction but on the sentence meted out by the trial court.
6. Under Section 343 of the *Criminal Procedure Code*, no appeal is allowed for a person who has pleaded guilty and has been convicted on that plea by the trial lower court unless it is on the extent and legality of the sentence. Herein, the Appellant does not dispute that the concurrent sentence imposed by the trial court was lawful. His complaint in that regard is that the sentence was excessive considering that he pleaded guilty to the charges, was a first offender, was a student at a technical training institute at the material time and that the offences occurred in a family set up with the material motor vehicle being the property of his father and having been recovered fairly intact.
7. The trial court took into consideration the foregoing factors before passing the impugned sentence which this court does not find to be excessive as it was within the precription of Section 278A of the *Penal Code* which provides that: -

“If the thing stolen is a motor vehicle within the meaning of the *Traffic Act*, the Offender is liable to imprisonment for seven years.”

And also, Section 275 and Section 313 of the *Penal Code* both of which provide for a sentence of three years imprisonment.

8. However, taking into consideration that the Appellant appears truly remorseful for his unlawful action against his father who has since forgiven him as indicated in his statutory declaration dated and filed herein on 11th December, 2023 and also taking into consideration that the Appellant has already served one year of the sentence, this court deems it just and fair to reduce the sentence on count one from six(6) years imprisonment to three (3) years imprisonment to run concurrently with the sentences on count two and three which shall otherwise remain intact.
9. It is only to that extent that this appeal is partly allowed.

Ordered accordingly.

DELIVERED AND DATED THIS 23RD DAY OF JANUARY 2024

J. R. KARANJAH,

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

