



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL APPEAL NO.158 OF 2013

Appeal from original conviction and sentence in Mwingi Criminal Case No. 535 of 2013 (Mr. V.A Otieno, SRM)

MOSES MUTHUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

Moses Muthui, the appellant was sentenced to seven years imprisonment for the offence of stealing from a locked motor vehicle contrary to section 279 (g) of the Penal Code. The offence is alleged to have been committed on 2nd October 2013 at Mwingi Township, Mwingi Central Location in Mwingi Central District Kitui County and the items stolen are a spare tyre and one radio set all valued at Kshs 32,000 the property of Lazarus Musyoka.

The appellant pleaded guilty to the charges and the facts were presented to which he admitted. He was convicted on his own plea of guilty and sentenced.

He has now come to this court on appeal listing four grounds that:

- i. The sentence is harsh and excessive.
- ii. That police threatened him with additional charges if he did not admit this offence.
- iii. That he is an orphan.
- iv. That the trial magistrate did not consider that he was a first offender.

During the hearing of the appeal, the appellant made brief oral submissions asking the court to reduce the sentence. He claims that he was not told to explain himself during the hearing of the case. He also told the court that he admitted the offence because he had agreed with the complainant that they would discuss a settlement.

The state conceded the appeal submitting that the plea was not unequivocal and that the appellant was not allowed to mitigate.

I have perused the record of the trial court. It shows that the charges were read to the appellant who admitted the same. The facts were presented showing that he broke into a locked motor vehicle belonging to Lazarus Musyoka on 2nd October 2012 at about 8.00am while the said vehicle was parked outside the Mwingi Livestock holding grounds and stole a spare tyre and a radio. The appellant was arrested and he led to the recovery of the stolen items.

The appellant admitted the facts upon which the trial court called for a probation report before sentencing. The report was filed in court and on 15th October 2013 the appellant was sentenced to seven years after the probation report was found not favourable.

The record does not show what language was used to take the plea. The record is silent on the previous records of the appellant and mitigation. This court has sat on either revision or appeal on a number of cases handled by this particular magistrate. With due respect to my junior colleague, this court has not hesitated to comment on the casual manner in which the magistrate has handled the cases in each particular file.

Criminal trials touch on the rights of both complainant and the accused. The accused's right to a fair trial is top in rank because if not carefully handled, a court can jail the wrong person or release a criminal back into society without facing the consequences of his/her criminal actions. Most of judicial officer's benefit from counsel from higher courts to correct mistakes they make. One must seriously read authorities of decided cases with a view to improving the way they handle cases. I hope this magistrate has been guided by the many cases in which this court has endeavoured to counsel him.

The appellant was not accorded a fair trial. He could be a criminal given his previous records. But even criminals must be accorded fair trial and their rights must be protected.

For this reason I hereby quash the conviction and set aside the judgement of seven years. The appellant shall be set at liberty forthwith unless for any other lawful reason he is held in custody. It is so ordered.

I find that it is not appropriate to order a retrial because the Probation Report which is already in the file is prejudicial to the appellant. I can only hope that he will reform one day since he seems not to have done so despite his previous convictions.

Dated, signed and delivered this 16th July 2014.

S.N.MUTUKU

JUDGE