

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL APPEAL NO. 129 OF 2013

From original conviction and sentence in Criminal Case No. 394 of 2013 at the

Senior Principal Magistrate's Court at Mwingi (Mr. V.A.Otieno, SRM).

SAMUEL MWENDWA MUTUA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The appellant was charged with stealing a motor cycle belonging to Mutie Josphat Katethya contrary to section 278A of the Penal Code. In the alternative he was charged with handling the same motor cycle knowing or having reason to believe that it was stolen. The offence in the main charge which he admitted is alleged to have been committed on the night of 8th and 9th July 2013.

After the facts were presented he admitted the same and was convicted on his own plea of guilt. He was sentenced to three (3) years imprisonment.

The appellant filed this appeal asking the court to reduce the sentence. Although in his amended petition of appeal he states that he was forced by the complainant and the police to admit the charges he told the court during the hearing of this case that he is contesting against the sentence only; that he has reformed while in jail and wants to be useful in society.

The counsel for the respondent opposed the appeal citing section 348 of the Criminal Procedure Code to the effect that no appeal should lie where an appellant has pleaded guilty except to the extent or legality of the sentence and that the trial court was lenient in sentencing.

I have considered this matter. The facts of the case show that the motor cycle in question belonged to one Josphat Katethya. It was stolen in Mwingi town and was recovered at Ngoliba centre on 9th July 2013. It had been parked by the roadside and the appellant was seen pushing it apparently after running out of fuel. He was arrested and the motor cycle recovered.

The record shows that the prosecution did not present previous convictions and the appellant was treated as first offender.

Section 278A under which the appellant was charged carries a maximum of seven (7) years imprisonment. The appellant was sentenced to three (3) years in jail. In my view this is not excessive at all. However, other than inconveniencing the complainant, the appellant did not benefit from his criminal action of stealing the motor cycle. With no record to show that he has other previous convictions and considering that the appellant has been serving sentence since July 2013, this court will invoke its powers under section 354 (3) (b) of the Criminal Procedure Code and alter the nature of the sentence. The sentence of three (3) years is hereby set aside and in its stead the appellant is sentenced to serve community service under the Community Service Orders Act for six months. He shall remain in custody for two weeks or any time as soon as the Probation Officer can find a work station for him. It is so

ordered.

Dated, signed and delivered this 26th June 2014.

S.N.MUTUKU

JUDGE