



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 323 of 2000

(From Original Conviction and Sentence in Criminal Case No.2366 of 2000 of the Chief

Magistrate's Court at Mombasa – G. Katasi, Miss – R.M.)

PETER KAMAU NG'ANG'A.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

**R U L I N G**

This Appeal was admitted on sentence only.

The Appellant pleaded guilty to the offence of Stealing a Motor Vehicle contrary to Section 278(A) of the Penal Code and was sentenced to serve 7 years imprisonment together with 7 strokes of the cane.

The Appellant admitted unequivocally that he had been accommodated by the Catholic Arch-Bishop of Mombasa at his residence and the Arch-Bishop was his guardian for a period of three years. He was looking after the property within the residence. The Appellant then began behaving badly and was expelled from the residence by the Arch-Bishop. He returned one night however and was allowed to spend the night there but during the night he stole the Arch-Bishop's Toyota Land Cruiser registration number KAE 908E worth Kshs.1.5 million. He disappeared for about 10 months until he was arrested in Kitale and was charged with the offence. The car was never recovered and the Appellant was reluctant to disclose what became of it. He merely says he had tried to sell it but was conned by the buyers.

Before me he pleads that the sentence be reduced because he has learned his lesson in prison and wishes to start a new life. He has no parents and has already sought pardon from the Arch-Bishop. He swears that the offence will not be repeated.

Learned State Counsel Ms. Kwena however felt that the offence was carefully planned by the Appellant as the vehicle has never been found upto now and he was not willing to assist the Police. He had abused the trust and generosity of his benefactor and therefore deserved the maximum sentence under the law.

I agree that it is an aggravating factor that the Appellant did not assist the Police enough to recover the stolen vehicle which is now lost for good. It was worth Kshs.1.5 million and the law cannot permit any person to benefit from his crime. There was absolutely no excuse for the Appellant to abuse the generosity of his guardian in such a devastating manner.

Having said that I must still consider whether the punishment meted out was in accordance with the law. An Appellate Court would not readily interfere with the discretion of the trial court unless that court has acted on some wrong principle or overlooked some material factors or it appears in all the circumstances of the case that the sentence is manifestly excessive.

It is a principle of sentencing that a first offender who pleads guilty would rarely be sentenced to maximum sentence. That was stated by the Court of Appeal in **Josephine Arissol –v- R., [1957] E.A. 447:-**

***“It is unusual to impose a maximum sentence on a first offender and it is wrong to depart from that rule because on the evidence he might have been convicted of a graver offence”.***

The maximum sentence under S.278A of the Penal Code is 7 years together with corporal punishment. It is the maximum sentence meted out to the Appellant. I think with respect that the Trial Magistrate departed from principle and omitted to consider such factors. In the event I will interfere with the sentence which I now set aside.

I substitute therefor a term of imprisonment of 5 years together with 3 strokes of the cane. To that extent only the Appeal succeeds.

**Dated this 23rd day of June, 2001.**

**P.N. WAKI**

**J U D G E**



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