



**Nyambura v Republic (Criminal Appeal E016 of 2021)  
[2023] KEHC 1822 (KLR) (27 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1822 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARSEN  
CRIMINAL APPEAL E016 OF 2021  
SM GITHINJI, J  
FEBRUARY 27, 2023**

**BETWEEN**

**DANSON MUTURI NYAMBURA ALIAS ALI KIBA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from the Sentence in Criminal Case No.169 of 2020 of the Principal  
Magistrate's Court at Lamu Law Courts - R.G.Mundia, SRM dated 14th July, 2020)*

**JUDGMENT**

**CORAM:** Hon. Justice S. M. Githinji

Appellant in person

Ms. A Mkongo for the State

1. Danson Muturi Nyambura alias Ali Kiba, was charged in the lower court with the offence of shop breaking and committing a felony, contrary to section 306 (a) of the *Penal Code*, Cap 63 Laws of Kenya.
2. The particulars of the offence are that on the July 11, 2020 at around 0200hours at Naivasha Village of Mpeketoni Division in Lamu West Sub – County within Lamu County, the appellant willfully and unlawfully broke and entered the shop of Washington Owino and stole from therein two packets of colgate, one and half kilogram of sugar, royco 40x4 cubes, one kilogram of beans, two sachets of tomato paste, one packet of spaghetti, one pair of slippers, one menthol plus, two packets of wheat flour, two small containers of blue band and one container of washing powder, all valued at Kshs 2,000/= the property of the said Washington Owino.
3. On July 13, 2020 the appellant was arraigned in court for plea taking. The charge was read to him in Kiswahili Language to which he pleaded guilty. The court consequently entered a plea of guilty.



4. The prosecutor stated the facts that on July 11, 2020 at around 0200 hours, one Joyce Muthoni Mugo noted that the complainant's shop had been opened as the door was slightly ajar. The said Joyce Muthoni Mugo informed the husband who then informed the complainant. The complainant rushed to his shop, entered therein and found the appellant inside. He had a bag and on checking inside he found the appellant had already stolen the following items; -
  1. One pair of purple slippers
  2. Two containers of blue band 100 grams
  3. 1.5kgs of sugar
  4. Two packets of 1kg wheat flour
  5. 500 grams of Toss washing powder
  6. Two packets of colgate herbal
  7. Menthol plus
  8. Cuchury spaghetti packet
  9. Packet of royco cubes.
  10. Two 50 grams of Tomato paste
  11. One kg of dry beans
5. The complainant raised alarm and members of the public rushed to the scene and in anger assaulted the appellant.
6. The matter was reported to the police who rushed to the scene, arrested the accused and took him to hospital. The recovered items were kept as exhibits and he was accordingly charged.
7. The appellant indicated that the facts were correct. He was then convicted of the offence on his own plea of guilty. The prosecutor indicated that the appellant was not a first offender. He had served 2 years imprisonment on a similar charge in CR 179 of 2016 and had been charged with a related offence of breaking into a dwelling house, but it was withdrawn under section 204, in Criminal Case No 178/2019.
8. In mitigation the appellant prayed for leniency saying he was hungry, he is disabled and had no one to help him. He alleged he is an orphan.
9. However, the court on perusing the file found the appellant had two more convictions in file No 174 of 2012 where he was sentenced to serve 5 years imprisonment and in Criminal Case No 13/2010 where he was placed on CSO.
10. The trial magistrate considering the foregoing record went for a deterrent sentence of 7 years imprisonment.
11. The appellant dissatisfied with the said sentence appealed to this Court to vary it in consideration of a non- custodial sentence, on the ground that he has reformed.
12. The appeal was canvassed by way of written submissions. The prosecution opposed the appeal on the ground that the appellant is a habitual offender who is yet to reform given his previous record. He deserved the deterrent sentence.



13. I have looked at the appellant's previous record and it is not impressive at all. He had previously served custodial sentences for related offences and had not reformed. He had even served a non-custodial sentence, and had one case withdrawn against and he is yet to learn his lesson. Given the offence and his antecedents, the sentence meted of 7 years imprisonment is not manifestly excessive, the trial court did not overlook some material factor, or took into account some wrong or irrelevant factor, or acted on a wrong principle in arriving at the said sentence. These factors as were enunciated in the case of [\*Alex Fundi Njeru-vs-Republic \(2020\) eKLR\*](#) which would call for variation of sentence are absent in this matter.

14. As such the appeal lacks merit and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT GARSEN THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2023**

.....

**S.M.GITHINJI**

**JUDGE**

**In the Presence of; -**

1. The Appellant in Person
2. Ms. A. Mkongo for the State

