



REPUBLIC OF KENYA



**KENYA LAW**  
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**Barasa v Republic (Criminal Appeal E016 of 2022)  
[2023] KEHC 3609 (KLR) (26 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3609 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E016 OF 2022**

**AC MRIMA, J**

**APRIL 26, 2023**

**BETWEEN**

**OWEN BARASA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal arising out of the conviction and sentence of Hon. D.K. Mtai (Principal Magistrate) in Kitale Chief Magistrate's Court Criminal Case No. E704 of 2022 delivered on 9<sup>th</sup> March, 2022)*

**JUDGMENT**

**Background:**

1. Owen Barasa, the Appellant herein, was charged with the offence of Burglary contrary to Section 304(2) and Stealing contrary to Section 279(b) of the [Penal Code](#). The particulars of the offence were that on the night of 22<sup>nd</sup> February 2022 at Namgol village in Mabonde location Kiminini sub-county within Trans Nzoia county, the Appellant broke and entered the dwelling house of George Khisa with intent to steal and did steal from there, a 32-inch Victron TV, a progressive scan DVD, Kileon thermos flash and an Acma woofer the property of the said George Khisa valued at Kshs. 46,000/=.
2. In the alternative, the Appellant was charged with the offence of handling stolen goods contrary to section 322 (1), (2) of the Penal Code.
3. The Appellant was arraigned in Court on 24<sup>th</sup> February, 2022. He pleaded guilty to the main count and the alternative count. The Court convicted the Appellant on his own plea of guilty. After mitigation, the trial Court sentenced the Appellant to serve 6 years imprisonment for the offence of burglary and 8 years imprisonment for the offence of stealing. The said sentences were ordered to run concurrently.



### **The Appeal:**

4. The appeal is in that regard against the sentence only. He lamented that the sentence was harsh and excessive against the fact that he pleaded guilty, was a first offender, remorseful for the offence and promised to never do it again. He added that he is the sole breadwinner of his wife and 2 children.
5. During the appeal hearing, the Appellant submitted that he pleaded guilty to the offence. He was unsatisfied with the sentence meted out arguing that it was very harsh. He prayed for a lenient sentence.
6. The Prosecution on its part left it to the Court.

### **Analysis:**

7. This Court is the first appellate Court.
8. The High Court in *Wanjema v. Republic* (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
9. I have considered this matter with caution and care. The trial Court was careful in the manner it conducted the sentencing proceedings.
10. The Court considered the nature of the offence and the mitigation, among other relevant factors. It also called for and considered a Pre-sentencing Report.
11. Sentencing is a crucial part in the criminal process and the administration of justice. It is also discretionary. In exercising the discretion, a sentencing Court is called upon to be guided by a raft of considerations. Such are discussed at length in the Sentencing Guidelines published on 29<sup>th</sup> April, 2016 vide Gazette Notice No. 2970 by the Hon. The Chief Justice of the Republic of Kenya who is also the Chairperson of the National Council on the Administration of Justice (NCAJ) and in case law including the Supreme Court in Petition No. 15 of 2015 *Francis Karioko Muruatetu & another v Republic* [2017] eKLR.
12. This Court does not see how the sentencing proceedings are to be impugned. It appears that the Appellant was intent in seeking a review of the sentence. That, he may pursue in an appropriate forum.
13. In the end, the following final orders of this Court do hereby issue: -
  - a. The Appeal against the sentence is dismissed.
  - b. This file is hereby marked as closed.
14. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 26<sup>TH</sup> DAY OF APRIL, 2023.**

**A. C. MRIMA**

**JUDGE**

**Judgment delivered in open Court and in the presence of: -**



Owen Barasa, the Appellant in person.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

**Regina/Chemutai – Court Assistants.**

