



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO. 181 OF 2019

ABRAHAM OKWABUBI TAWAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement and sentence of Hon. I.G. Ruhu, RM, dated

8th November 2019 in the SPM's Court at Kimilili, in Criminal Case No.586 of 2019,

Republic vs Abraham Okwabubi Tawai)

JUDGEMENT

The appellant has appealed against his conviction and sentence of eight (8) years imprisonment in respect of the offence of shop breaking contrary to section 304 (b) and stealing contrary to section 279 (b) of the Penal Code (Cap 63) Laws of Kenya.

In this court the appellant has raised five grounds of appeal in his petition of appeal.

It is to be noted that the appellant was convicted on his own plea of guilty and was sentenced to eight years imprisonment.

It therefore follows that the appellant is only allowed to challenge the extent and legality of his sentence in terms of section 348 of the Criminal Procedure Code (Cap 75) Laws of Kenya.

The only ground that touches on the issue of sentence is ground 1 in which the appellant has faulted the trial court for imposing upon him an excessive and harsh sentence.

Furthermore, in grounds 2 and 3 the appellant has challenged his conviction; which are irrelevant now.

I find that the plea of guilty of the appellant was unequivocal in that he was not informed of the statutory penalty that is provided for before an order of conviction was recorded. See Elijah Njihia Wakianda v Republic, Court of Appeal sitting at Nakuru, in Criminal Appeal No 437 of 2010 (2016) e-KLR. I hereby quash the conviction recorded against the appellant.

The only issue for consideration is whether I should order a re-trial. In this regard, one of the main considerations is whether the potentially admissible evidence if believed might result in a conviction. See Braganza v R (1957) EA 152. The other consideration is the period the appellant has been in custody namely both pre-trial and post judgement custody.

Furthermore, I find that some of the stolen goods were recovered. Additionally, the appellant has been in both pre-trial and post judgement custody for about a period of two years and five months.

After taking into account all of the foregoing matters into account I find that it is not in the interests to order a re-trial. I hereby decline to do so.

In the premises, the appellant's appeal succeeds with the result that he is hereby ordered set free unless he is held on other lawful warrants.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDEO CONFERENCE THIS

28TH DAY OF JANUARY, 2022

J M BWONWONG'A

JUDGE

In the presence of:-

Mr. Kinyua: Court Assistant

The appellant in person

Mr. Ayiekha for the Respondent