



REPUBLIC OF KENYA



KENYA LAW
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**Sanga v Republic (Criminal Appeal E082 of 2021)
[2022] KEHC 17135 (KLR) (17 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 17135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E082 OF 2021
AC MRIMA, J
NOVEMBER 17, 2022**

BETWEEN

LINUS KIPTOO SANGA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal on sentence arising from the conviction and sentence by Hon. S. N. Makila, Principal Magistrate in Kitale Chief Magis(Being an appeal on sentence arising from the conviction and sentence by Hon. S. N. Makila, Principal Magistrate in Kitale Chief Magistrate's Court Criminal Case No. E020 of 2021 delivered on 23rd September, 2021)trate's Court Criminal Case No. E020 of 2021 delivered on 23rd September, 2021)

JUDGMENT

1. The appellant herein, Linus Kiptoo Sanga, was charged with the offence of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the [Penal Code](#). He was also charged in the alternative with the offence of handling stolen goods contrary to section 322(1)(2) of the [Penal Code](#).
2. He denied the offences and a trial was held where he was found guilty of burglary and stealing, convicted and sentenced to a term of five years in prison for the offence of burglary and another term of five years for the offence of stealing. Both sentences were too run concurrently.
3. The appellant initially appealed against both the conviction and sentence. However, at the hearing of the appeal, the appellant abandoned the appeal on conviction and only pursued the appeal on sentence.
4. In his submissions, the appellant claimed that the sentence was very harsh. He prayed for a lesser sentence.
5. This court is the first appellate court.



6. The 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.
7. I have considered this matter with caution and care. The trial court was careful in the manner it conducted the sentencing proceedings.
8. The court considered the nature of the offence and the mitigation, among other relevant actors.
9. 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 April 29, 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.
10. 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.
11. 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.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 17TH DAY OF NOVEMBER, 2022.

A. C. MRIMA

JUDGE

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

Linus Kiptoo Sanga, the Appellant in person.

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

Kirong/Regina – Court Assistants.

