



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL APPEAL NO E015 OF 2020

EUGINE ODOUR OMONDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence of Hon P.C.Biwott, SPM, dated 30th November 2020 in Criminal Case No 823 of 2019 in the Senior Principal Magistrate's Court at Kabarnet, Republic v Eugene Odour Omondi)

JUDGMENT

1. In his petition to this court, the appellant has appealed against his sentence of twelve months' imprisonment in respect of the offence of breaking into a building and committing a felony contrary to section 306 (a)4 of the Penal Code (Cap 63) Laws of Kenya
2. The appellant has raised the following grounds in his petition to this court. In ground 1 and 2, the appellant has stated that he committed the offence due to the bad company of the people he was with; whom he has now promised to shun.
3. In ground 3 the appellant has stated that he has siblings who entirely depend upon him as he is their sole bread winner.
4. In ground 4 the appellant has stated that the one year he was in pre-trial remand should be taken into account in accordance with section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.
5. Furthermore, the appellant has filed written submissions in support of his appeal. He has replicated the same matters that he has raised in his grounds of appeal in his submissions; which I find unnecessary to consider.
6. In sentencing the appellant, the trial court took into account a probation officer's report that declined to recommend that he be released on probation.
7. The probation officer found that he was a first offender. The trial court did not take into account that he was a first offender. I find this to be an error of law; that entitles me to interfere with the sentence.
8. I have re-evaluated the sentence imposed in the light of the applicable law as a first appeal court. As a result, I find that I am entitled to interfere with the sentencing discretion of the trial court; for it erred in law in failing to take into account that the appellant was a first offender and that he was in pre-trial custody for one year. The trial court was bound to take into account that period as required of it by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.
9. After considering the foregoing matters, I find that the ends of justice have been met in view of the sentence the appellant has served.
10. In the premises, the appellant has succeeded in his appeal with the result that he is hereby ordered released unless held on other lawful warrants.

Judgment dated, signed and delivered in open court at Kabarnet this 26th day of February 2021.

J M BWONWONG'A

JUDGE

In the presence of:

Mr Sitienei the court assistant.

The appellant present in person.

Mr Abwajo for the respondent.