REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL 36 OF 2017

(From original Sentence dated 20/1/2017 in Nanyuki CM Criminal Case No 159 of 2016 – W J Gichimu, PM)

JAMES LONGOCIA EKWOM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant herein, **JAMES LONGOCIA EKWOM** (1st accused in trial court), was convicted of one count of ***school breaking and committing a felony therein*** contrary to **section 306(a)** of the **Penal Code**. The felony committed was theft of various items. He was sentenced to 3 years imprisonment on 20/01/2017.

2. The Appellant has appealed only against the sentence. Two of his co-accused were similarly convicted and sentenced. They also appealed, but they abandoned their appeals after they were released while serving sentence. The 4th accused was acquitted.

3. I have considered the Appellant's submissions, both written and oral, as well as those of the learned prosecution counsel for the Respondent. I have also considered the circumstances in which the offence was committed.

4. The sentence imposed upon the Appellant was lawful. He has complained only that the trial court did not take into account the period that he was in remand during his trial. This is not correct. The trial court specifically stated –

> ***"I take into account the period the 1st Accused has been in custody….."***

5. I note that the maximum sentence for the offence the Appellant and his co-accused stood convicted of was 7 years imprisonment. They got only 3 years. The school breaking and theft therein no doubt caused unacceptable disruption in the learning of the pupils of the school. In these circumstances it cannot be said that the sentence imposed upon the Appellant was manifestly harsh or excessive.

6. I find no merit in the appeal against sentence. It is hereby dismissed. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 17TH DAY OF JANUARY 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 30TH DAY OF JANUARY 2020