



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL 195 OF 2019

KEVIN WANJALA TITUS.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the conviction and sentence in Original Sirisia Criminal Case Number 1959 of 2019

delivered on 2.12.2020 by HON C.M. WATTIMAH- SRM]

J U D G M E N T

The appellant herein was charged in count 1 with breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code and in alternative count of Handing of Stolen Goods contrary to Section 322(1)(2) of the Penal Code.

The appellant was convicted on his own plea of guilty for the offence of breaking into a building and committing a felony contrary to Section 306 (a) of the Penal Code. He was subsequently sentenced to 24 months in jail.

He lodged this appeal on the grounds that he is a first offender and remorseful for the offence; ***that the trial court failed to consider that the whole of the prosecution case was insufficient and poorly investigated; that the sentence was harsh and excessive.***

He also filed written submissions in which he reiterated his grounds of appeal and he submitted that the sentence was harsh and asked for court leniency.

The Respondent state counsel Ayekha opposed the appeal and submitted that the plea was unequivocal and therefore appeal on conviction and sentence is barred. She submitted that sentencing is discretionary to trial court and that the court was to sentence the accused to maximum of seven years but chose to give him two years therefore the sentence is lenient. The Respondent relied on the cases of ***Olel v Republic [1989] KLR 444***

I have given due consideration to this appeal. The principles that an appellate Court will act upon in exercising its discretion to interfere with a sentence imposed by the trial court are now well settled. The Court of Appeal in the case of ***Ogolla s/o Owuor vs Republic,***

Section 306(a) and 306(b) of the Penal Code provides as follows:

“A person who -

a) Breaks and enters a school house, shop, warehouse, store, office, counting house, garage, pavillion, club, factory or workshop or any building belonging to a public body, or any building or part of a building licensed for the sale of intoxicating liquor or a building which is adjacent to a dwelling house and occupied with it but is not part of it, or any building used as a place of worship, and commits a felony therein; or

b) Breaks out of the same having committed any felony therein; is guilty of a felony and is liable to imprisonment for seven years”.

The appellant pleaded guilty and was convicted of the offence of breaking into a building and committing a Felony Contrary to Section 306 (a) as read with Section 306(b) of the Penal Code. The offence on conviction carries a maximum sentence of Seven (7) years. The appellant was sentenced to Twenty Four Months (2) years imprisonment. That cannot be said to be excessive sentence. I find no merit in the appeal. The appeal is hereby dismissed.

Dated, signed and delivered at Bungoma this 26th day of November, 2020.

.....

S N RIECHI

JUDGE