



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC.MISC.CR.APP CASE NO. 61 OF 2018

KELVIN SAVARI MUNYAO.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

(FORMERLY KILUNGU SRMCR NO.26 OF 2018)

RULING

INTRODUCTION

1. The Applicant was charged with offence of **Bulgrary**, contrary to Section 304 (2) and **Stealing** contrary to Section 279 (b) of the Penal Code.

2. Particulars being that on the night of 4th/5th January, 2018 at Mwaani Sub-location, Ikima Location in Kilungu Sub-county within Makueni County, Kelvin Savali Munyao broke and entered the dwelling house of Jackson Mbai Munyao with intention to steal therein and did steal from therein one jean trouser, the property of the said Jackson Mbai Munyao the said jean trouser being of the value of Kshs.1, 000/=.

3. Count II: Burglary, contrary to Section 304(2) and Stealing contrary to Section 279(b) of the Penal Code.

4. Particulars being that on the night of 4th/5th day of January, 2018 at Mwaani village, Mwaani Sub –Location in Kilungu Sub-County within Makueni County, Kelvin Savali Munyao broke and entered the dwelling house of Mackson Mbai Munyao with intent to steal therein and did steal from therein a lessa, one curtain, ladies top and T-shirt, the property of Mutindi Nzovi, being of the value of Kshs.3, 000/=.

5. Count III: Malicious injury to property contrary to Section 339(1) of the Penal Code.

6. Particulars being that on the 5th day of January, 2018 at Mwaani village, Mwaani Sub-locatio, Ikima Location in Kilungu Sub-county within Makueni county, Kelvin Savali Munyao wilfully and unlawfully destroyed assorted clothes valued at Kshs.55,000/= the property of Mutindi Nzovi.

7. He appeared in court on 08/01/2018 and admitted the charge and the facts thereof resulting in conviction and sentence to serve :-

Count I: Two years

Count II: Two years

Count III: Three years to run concurrently.

8. In his mitigation, he sought forgiveness and leniency. This was on 23/01/2018 after probation report disclosed that he was a repeat offender.

9. After about eight (8) months, he lodged application filed on 07/09/2018 seeking leave to file appeal out of time.

10. In his grounds in support he avers that his unnamed relatives promised to hire an advocate to peruse appeal but he learned later that they

were unable to raise requisite legal fees.

11. Under Section 349 of the Criminal procedure Code an appeal ought to be lodged within 14 days from date of delivery of the sentence or order.

12. However, the said provision allows appellate court to consider a request for lodging an appeal out of time. If an applicant shows that the inability had been caused by late supply of judgment or order appealed against.

13. The applicant has not demonstrated that requirement set out by the said provisions, thus the court finds that the application has no merit and it's dismissed.

14. The delay also for over 8 months is inexcusable as it is not explained.

SIGNED, DATED AND DELIVERED THIS 28TH DAY OF JANUARY, 2019, IN AN OPEN COURT.

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HON.C.KARIUKI

JUDGE