



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO.190 OF 2017

(Appeal Originating from Nyahururu CM's Court Cr.No.1376 of 2017 by: Hon. O. Momanyi – S.R.M.)

PETER NJUGUNA WAMBUI.....APPELLANT

- V E R S U S -

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant, **Peter Njuguna Wambui** was on **30/8/2017** convicted on his own plea of guilty and sentenced to serve five (5) years imprisonment for the offence of house breaking and stealing contrary to Section 304(1)(b) as read with Section 279(b) of the Penal Code.

The allegation against the appellant was that on 20/8/2017, at Gituamba area of Subukia Sub County, broke and entered the dwelling house of Peninah Wambui Ikenye with intent to steal and stole from therein one black solar Chloride battery, a mattress, one blanket and 3 chicken all valued at Kshs.13,000/=.

In the alternative, the appellant faced a charge of handling stolen property contrary to Section 322(1) of the Penal Code.

The particulars of the charge are that on 20/8/2017 at Subukia Trading Centre, otherwise than in the cause of stealing, dishonestly retained one black chloride Solar battery, two chicken and one mattress all valued at Kshs.11,500/= knowingly or having reasons to believe them to be stolen, the property of Peninah Wambui Ikenye.

When he appeared before the court on 21/8/2017, the appellant pleaded guilty and the matter was deferred to 30/8/2017 for plea and facts. On 30/8/2017, he admitted the offence, facts were read to him which he confirmed to be true and he was convicted accordingly.

The appellant is not contesting the conviction but the sentence which he claims to be harsh and excessive; that he has sisters whom he assist and he has no parents and therefore pleads for leniency.

The appeal was opposed by learned counsel for the State **Ms. Rugut**, who submitted that after conviction, the appellant was asked to give his mitigation and he did not say anything and the trial court noted that he was not remorseful; that he was liable to be sentenced to 7 years imprisonment upon conviction, but the court only handed him 5 years imprisonment and the appeal should be dismissed.

In reply the appellant stated that when he got in the court, he got confused and did not ask for leniency.

The appellant pleaded guilty to the offence and therefore did not waste the court's time.

What the prosecution counsel did not tell the court is that the appellant was not a first offender but had been convicted of a similar offence in Nyahururu Criminal Case No.1144/2016 where on 30/5/2016, he was fined Kshs.18,000/= in default 5 months imprisonment. He was therefore not a first offender.

It is obvious that the appellant had not reformed following the earlier sentence because he committed this offence within a year of serving the earlier sentence.

When sentencing the trial court had taken into account the fact that the offence was rampant in the jurisdiction, that the appellant was not remorseful and he needed to be removed from society for some time in order to be rehabilitated. Although the appellant claims to have been confused when asked to mitigate, the fact that he had committed a similar offence within such a short period calls for a deterrent sentence.

As observed by counsel, the maximum sentence under the provisions of the law is 7 years. The appellant was handed 5 years. I note that the court did not pronounce sentence on each limb. I hereby correct that error. Because accused pleaded guilty, I will reduce the sentence of 5

years to 3½ years on each limb within which he should be reformed. Accordingly, the appeal succeeds to the extent that the appellant will serve 3½ years imprisonment on each limb and the sentences will run concurrently. No findings on the alternative charge. It is so ordered.

Dated, Signed and Delivered at NYAHURURU this 17th day of April, 2018.

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R.P.V. WENDOH

JUDGE

PRESENT:

Ms. Rugut - Prosecution Counsel

Tirian - Court Assistant

Appellant - present