



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL APPEAL NO.10 OF 2017

(CONSOLIDATED WITH CRIMINAL APPEAL NO.3 OF 2018)

RICHARD KIBET TOO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the conviction and sentence in Kericho

CM Cr. No. 233 of 2017 and Kericho CM Cr. No. 232 of 2017

by Hon. J. Ndururi (PM) dated 25th January 2017)

JUDGMENT

1. The appellant faced two criminal cases before the Chief Magistrate's court in Kericho. In Criminal Case No.232 of 2017, he was charged with the offence of burglary contrary to section 304 and stealing contrary to section 279 of the Penal Code. The particulars of the offence were that on the 24th day of January 2017 at about 0300 hours at Kabianga University, Kabianga Location in Kericho Sub-county within Kericho County broke and entered the house of Anthony Kirui Kipchumba with intent to steal and did steal one mobile phone make ITEL valued at Kshs.7,000/- the property of Anthony Kirui Kipchumba. He faced an alternative count of handling stolen property contrary to section 322 (1) as read with section 2 of the Penal code. He pleaded guilty to the offence and the facts were read to him, and he stated that they were correct. He was convicted on his own plea of guilty. The court noted that he had already been convicted in Criminal Case No. 233 of 2017, that three other mobile phones were recovered from him, which suggested that he was on a burglary spree. He was sentenced to serve 5 years' imprisonment.

2. In Criminal Appeal No. 3 of 2018, the appellant has appealed against his conviction in Kericho Chief Magistrate's Court Criminal Case No. 233 of 2017. In that case, he faced a charge of burglary contrary to section 304 of the Penal Code and stealing contrary to section 279 of the Penal Code. The complainant in that case, Harris Kobia who was also resident at Kabianga University, lost a mobile phone GT SS 301 Samsung and a laptop make Acer valued at Kshs.49,000/-. The appellant was charged before Hon. Ndururi (PM) on 25th January 2017, the same date as he pleaded guilty in Cr. Case No.232 of 2017. He stated that he was sick as he had been beaten up by students at Kabianga University, but that he was ready to take plea. He pleaded guilty to the alternative charge he was facing, handling stolen property contrary to section 322 as read with section 2 of the Penal Code. He was sentenced to serve 5 years imprisonment.

3. In his grounds of appeal in both appeals, he argues, first, that the trial magistrate erred in not warning him of the consequences of pleading guilty to the charges. He also alleges that the court erred in not satisfying itself that his plea of guilty was unequivocal. Thirdly, he contends that the sentence he was handed was harsh and excessive bearing in mind that he was a first offender. He asks the court to set aside his conviction and quash the sentence.

4. In his submissions at the hearing of these appeals on 3rd May 2018, the appellant submitted that he was appealing against both Criminal Case Nos. 232 and 233 of 2017. That he was convicted on the same day and sentenced to 5 years in each case. That when he went to prison, he was informed that he was sentenced to 10 years imprisonment.

5. The response of the state is that the accused understood the charges against him and understood the facts when they were read to him, so his plea was unequivocal.

6. With respect to the sentence, the view of the State is that it was proper, given that he had committed 3 separate offences against two different persons. As to whether the sentences should run concurrently or consecutively, in the view of the State, if the trial court is silent on

this point, as in this case, the sentences are to run consecutively.

7. In submissions in reply, the appellant prayed that the sentences should run concurrently as he was sentenced on the same day. He also prayed that the court should order a re-trial as he was sick at the time he took the plea.

8. I have considered the record of the trial court in Criminal Case No. 232 of 2017 and 233 of 2017. I note that the appellant pleaded guilty in both cases, to count 1 and 2 in Criminal Case No. 232 of 2017 and to count 2 in Criminal Case No. 233 of 2017. The facts were read to him in both cases and he admitted that the facts were correct. The two cases were before the court on the same day, and though he claimed that he was sick as he had been beaten by students at Kabianga University, he nonetheless stated he was ready to take plea.

9. It seems to me that the core of these appeals is the sentence. Indeed, the appellant pleaded that the sentences should run concurrently. If the sentences were to run consecutively as argued by the State, it would translate to a 10 year sentence for the appellant.

10. The offences that the appellant was charged with carry a penalty of fourteen years. The accused is a first offender, and though he was sentenced on the same day in both cases, the offences were committed on the same day and in the same location. In my view, a sentence of 5 years in each case, and to run consecutively is excessive and harsh in the circumstances. I accordingly reduce the sentence to 3 years imprisonment, the sentences to run concurrently.

Dated Delivered and Signed at Kericho this 27th day of June 2018

MUMBI NGUGI

JUDGE