

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL REVISION NO.97 OF 2018

STEPHEN WATORO MWANGI..... APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

REVISION ORDER

Stephen Watoro Mwangi was jointly charged with 4 others for the offence of **Breaking into a building and committing a Felony Contrary to Section 306 (a) of the Penal Code**.

He is alleged to have broken and entered Free Pentecostal Church Kabazi on the night of 14th and 15th December, 2017, and stolen several items named in the charge sheet.

In the alternative, the applicant faced a charge of **Handling stolen property Contrary to Section 322 (10 (2) of the Penal Code** in that on 22/12/2017 at Kabazi village, otherwise than in the course of stealing, dishonestly obtained two mini laptops worth ksh 48,000/= the property of Free Pentecostal Church Kabazi.

The applicant and the co-accused were arraigned before the Hon. S.N. Mwangi, SRM on 27/12/2017 where the applicant who was the 2nd accused pleaded guilty to the offence.

The facts were read to him and he admitted that they were correct. He was thereafter sentenced to serve 4 years imprisonment on 1st limb and 4 years imprisonment on 2nd limb. The sentences were ordered to run consecutively, meaning he would serve 8 years in prison.

The file was placed before me by Mr. Waichungo, Counsel for the applicant, for revision under Section 362 of the Criminal Procedure Code. He contends that the plea was equivocal and that the sentence was illegal and the court should intervene and quash the conviction and set aside the sentence or that if the court finds the plea to be unequivocal, it should impose the proper sentence by sentencing the applicant to the period already served.

I have perused the court file. The charge was read to the applicant in the Kiswahili Language and he admitted that the charge was true. The facts were read to him and all exhibits were produced in court. He responded that the facts are true. He was said to be a first offender and he gave his mitigation asking for the court's pardon and that he would not repeat the act and was in school. He did not state which school or class.

I am satisfied that the plea was unequivocal and was taken in accordance with the principles set out in *Adan v Rep 1973, EA.445*

As regards the sentence, I do agree with counsel that the same was illegal because the applicant was charged under **Section 306(a) of the Penal Code** and there are no limbs under that section. I believe the Magistrate mistook that section with an offence committed under **Section 304 (i) and 304(2)** where one is sentenced on two limbs. I therefore set aside the sentence of 4 years imprisonment on each limb totaling 8 years.

I note that after the applicant pleaded guilty, the matter was withdrawn by the complainant as against the other accused. Some of the stolen goods were recovered. The applicant was said to be a first offender. So far, he had served about 11 months, imprisonment from the date of imprisonment on 12/1/2018. I hereby sentence him to the period so far served and order his release forthwith unless otherwise lawfully held.

Signed and Dated at *NYAHURURU* this **20th** day of December 2018.

R.P.V. Wendoh

JUDGE