



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 6 OF 2015**

**KAMUNYINGE EKIRU INGE..... APPELLANT**

**VERSUS**

**REPUBLIC .....STATE**

***(Appeal from the Sentence of the Principal Magistrate's Court at Maralal Hon. C.N Ndegwa – Principal Magistrate delivered on the 17 the November, 2014 in CMCR Case No. 824 of 2014)***

**JUDGEMENT**

The appellant herein **KAMUNYINGE EKIRU INGE** has filed this appeal challenging **only** the sentence imposed on him by the learned Principal Magistrate sitting at Mararal Law Courts.

The appellant was arraigned before the trial court on 17/11/2014 facing a charge of **BREAKING INTO A BUILDING AND COMMITTING A FELONY CONTRARY TO SECTION 306(A) OF THE PENAL CODE.**

The particulars of the charge were that:-

***“On the 13<sup>th</sup> day of November, 2014 at about 11.00am at Milimani area in Samburu Central Sub-County within Samburu County, jointly broke and entered a dwelling house of STEPHEN NYAKUNDI and committed therein a felony namely stealing and stole from therein one DSTV decoder, one pair of grey suit, one pair of brown shoe, 4 packets of crown gold milk, 4 kgs of mumias sugar, 5 litres of elianto cooking oil, onions and tomatoes all valued at Ksh 66,960/= the property of STEPHEN NYAKUNDI”***

The appellant pleaded ‘**Guilty**’ to the charge. During the hearing of the appeal the appellant reiterated that he did not seek to challenge his conviction. He only wished to appeal against the ten (10) years sentence imposed by the trial court on the basis that the sentence was harsh and excessive.

The procedure to be followed when an accused person pleads guilty to a charge is set out in Section 207 of the Criminal Procedure Code.

Similarly in the case of **ADAN Vs REPUBLIC [1973] E. A 445** this procedure was described as follows

***“(i) The charge and all the essential ingredients of the offence should be explained to the accused in the language or in a language he understands.***

***(ii) The accused's own words should be recorded and if they are an admission a plea of guilty should be recorded.***

***(iii) The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain facts or to add any relevant facts***

***(iv) If the accused does not agree with the facts or raises any questions of his guilt his reply must be recorded and the change of plea entered.***

***(v) If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded"***

With the guidance of this authority I have carefully perused the record of the proceeding before the lower court. Upon having the charge read out to him the appellant responded in Kiswahili:-

***"Ni kweli ie it is true"***

The court prosecutor then proceeded to read out an elaborate narrative of the facts and produced the relevant exhibits(s). To this the appellant relied

***"The facts are correct"***

The court then proceeded to convict the appellant on his own plea of **'Guilty'**. The appellant was allowed an opportunity to mitigate before he was sentenced.

I am satisfied that the trial magistrate complied both with Section 207 of the Criminal Procedure Code and with the guidelines as set out in the Adan Case. The proceedings were conducted in Kiswahili a language which he understood and the appellant's plea of **'Guilty'** was unequivocal. I find that the appellant's conviction was proper and I do confirm that conviction.

Following his conviction the court prosecutor read out the appellant's previous record which included three (3) previous convictions. The appellant accepted his previous record stating

***"What the prosecutor has said is correct ....."***

Clearly as noted by the trial court his appellant was a habitual offender and a deterrent sentence was called for. The appellant could not expect any leniency from the court as it appeared that he was a non-repentant law breaker. The ten (10) year sentence imposed was both legal and appropriate. However I do find the same was on the higher side. I therefore allow this appeal against sentence. I set aside the ten (10) year term imposed and I substitute a sentence of six (6) years imprisonment. This sentence runs from the date of the appellant's conviction in the trial court. It is so ordered.

Dated in Nakuru this 30<sup>th</sup> day of January, 2017.

**Maureen A. Odera**

**Judge**