



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO. 170 OF 2016

ISRAEL HARRISON LEMOLITI APPELLANT

versus

REPUBLIC..... RESPONDENT

*(Being an appeal from the original conviction and sentence by Hon. E. BETT – SENIOR RESIDENT
MAGISTRATE dated 2nd April 2015 in Nanyuki Chief Magistrate’s Court Criminal Case No. 935 of
2014)*

JUDGMENT

1. **ISRAEL HARRISON LEMOLITI** the appellant herein was convicted after trial before the Chief Magistrate’s Court at Nanyuki of the **offence of breaking into a building and committing a felony contrary to section 306 of the Penal Code**. He was sentenced to serve 5 years imprisonment.

2. By this appeal he appeals against that sentence. In support of his appeal he filed documents which read like a proposal for setting up a non-government organisation. From those documents it seems that the appellant desires on being released from prison to assist his community, the Maasai, to be alleviated from difficulties that they encounter. In his submissions in support of his appeal the appellant stated that he is a first offender and an orphan. He stated that during his incarceration he left behind siblings who rely on him.

3. The appellant’s appeal against sentence was not opposed by the Senior Principal Prosecution Counsel Mr. Tanui.

4. The section under which the appellant was charged, that is **section 206** of the Penal Code, attracts a maximum sentence of 7 years imprisonment. The appellant was sentenced to 5 years imprisonment. It is noteworthy that the appellant was arrested on 22nd October 2014. He was sentenced by the trial court after trial on 2nd April 2015. It seems that in passing the sentence of 5 years the trial court did not consider the period the appellant was held in custody during his trial as required under **section 333** of the Criminal Procedure Code. The proviso under that section is the in following terms:-

“provided that where the person sentenced under sub section 1 has prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

5. The appellant was in custody for 6 months before he was sentenced to five years imprisonment. He has to date served 2 years jail terms. Bearing in mind that the appellant was a first time offender the sentence of 5 years was excessive in the circumstances. Since the appellant has served 2 years and 6 months, in this courts view that is sufficient sentence in the circumstances. It is because of the above that this court

is entitled to the variation of the trial court's sentence.

6. Accordingly the trial court's sentence is hereby set aside. The appellant is hereby sentenced to the period so far served. An order is hereby made for the **appellant to be released from custody unless he is otherwise lawfully held.**

DATED AND DELIVERED THIS 29TH DAY OF MARCH 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Ndungu

Appellant: Israel Harrison Lemoliti

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE