



REPUBLIC OF KENYA

IN THE HIGH COURT OF KAKAMEGA

HCRA NO. 91 OF 2017

PURITY VIOLA :::::::::::::::::::::::::::::::::::APPELLANT

VERSUS

REPUBLIC :::::::::::::::::::::::::::::::::::RESPONDENT

(Arising from the judgment of Hon. J.Ong’ondo in Criminal case No. 2623 of 2014 at Chief Magistrate’s court at Kakamega)

J U D G M E N T

1. **Purity Viola** the appellant was charged with the offence of Housebreaking Contrary to Section 304 (1) (a) and stealing Contrary of Section 279(b) of the Penal Code.

The particulars being that the appellant on the 12th day of August, 2014 at Amalemba area in Kakamega Central District within Kakamega County jointly broke and entered the building used as a dwelling house by Solomon Mose Masese and stole one home theatre make Samsung, one flat screen T.V Sony 32, one Duvet blanket and one blanket , one pair of shoes ,trousers, assorted CD players and cash Kshs. 4000/= all valued at Kshs. 56,500/= the property of the said Solomon Mose Masese. She also faced an alternative count of handling stolen goods Contrary to Section 322(1) as read with Section 322(2) of the Penal Code.

2. The appellant pleaded not guilty to the charges and after a few mentions she decided to change plea, was convicted and sentenced to 5 years imprisonment.

3. When this appeal came for hearing the appellant addressed this court on the issue of sentence only. She argued that the sentence was too harsh. The State through Mr. Juma did not oppose the appeal against sentence .

4. As a first appeal court I have a duty to look at the record and satisfy myself as to its correctness . I have perused the record and noted that the Kakamega Chief Magistrate’s court criminal case No. 2623/14 had three accused persons namely.

(i). Daniel Mwisunji

(ii) Purity Viola

(iii) Anna Khaika

5. Anna Khaika was convicted and placed on probation for two (2) years on 2nd September, 2014 .

The record further shows that on 30th September, 2014 , the 2nd accused –“ Purity Viola” requested for the charge to be read to her.

6. This was done but facts were not read until the next day (1/10/14)

- On 1st October, 2014 the facts were read and she was convicted and a probation report was called for.

7. On 14th October, 2014 the record shows that the same 2nd accused requested for the charge to be read. I want to assume the actual person who asked for this was the 1st accused- Daniel Mwisunji . There is no indication that the charge was read and explained to him but he responded.

“ It is true”

8. The file was placed aside and called later only for the Prosecution to state “ Facts as per charge sheet. I did not have the police file”.

The court proceeded to convict the 1st accused and called for a Probation Officer’s report , in two days .

9. On 17/10/17 when there was no Probation report filed the court proceeded to convict him on the alternative count. This indeed was unprocedural as there was already a conviction on the principal count. He was then sentenced to 5 years imprisonment.

10. On 24th October, 2014 the appellant was sentenced to 5 years imprisonment. It is the appellants request that the sentence be reduced.

I am satisfied that the appellants conviction is safe. Considering that the appellants’ co- accused (3rd accused) was placed on 2 years probation, there is no good reason why the appellant was sentenced to five (5) years imprisonment . No explanation was given for the different sentences.

11. As far as this appellant is concerned I find that the sentence was too harsh. She has been in Prison for more than 2 ½ years.

12. I hereby confirm her conviction but set aside the sentence of 5 years imprisonment and substitute it with a sentence of the period already served.

13. She will be released forthwith unless otherwise lawfully held under a separate warrant.

Orders accordingly

Delivered, signed and dated this 17th day of August 2017 at Kakamega

H.I. ONG’UDI

JUDGE