



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO. 5 OF 2017**

**DENNIS KINYUA.....APPELLANT**

*Versus*

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence in*

*Nanyuki Chief Magistrate's Court Criminal Case No. 210 of 2015*

*by Hon. L. MUTAI Chief Magistrate on 30<sup>th</sup> November 2016).*

**JUDGMENT**

1. **DENNIS KINYUA** was charged before the Nanyuki Chief Magistrate's Court with the **offence of store breaking and stealing contrary to section 306(a) of the Penal Code**. After trial he was convicted as charged and after the trial court considered his mitigation he was sentenced to serve 3 years imprisonment. He was aggrieved by that sentence and has presented this appeal against that sentence.

2. The appellant in oral submissions before this court requested for mercy in the consideration of his appeal. He attributed his criminal acts to peer pressure and drug taking. He stated that if the court released him from custody he was intent on creating awareness to those who might be tempted to commit crime. Just as he had submitted before the trial court he submitted at his appeal that he is a father of two children the first one being disabled. That his wife had been involved in an accident which impaired her from taking care of their children. That their children consequently were being cared for by his parents.

3. The learned Principal Prosecution Counsel Mr. Tanui opposed the appeal against sentence. In opposing he submitted that the mitigations given by the appellant before the trial court were the same mitigations he had submitted at his appeal. Learned counsel further submitted that the maximum period for the offence the appellant committed was 7 years and that the trial court had sentenced him to 3 years.

4. I have considered the submissions made by the appellant. It is important to state that the prosecution during the trial proved that the appellant when he broke into the complainant's store he stole a variety of batteries, tools and paints. Those items were never recovered. Under **section 306** of the Penal Code the maximum sentence for the offence which the appellant was convicted is seven years. The appellant as stated before sentenced by the trial court to 3 years imprisonment. It is important to state that the purpose for which a sentence is passed against a person who is convicted is partly to ensure that the offender is adequately punished, to prevent the offender from re-offending, to protect the community from the offender and to promote rehabilitation of the offender. See the case of **Regina vs M A (2004) 145 135**.

5. Bearing the above principles of sentencing and considering the mitigations of the appellant and also considering the sentence of 3 years imprisonment I find that the appellant's appeal has no merit. The sentence of the trial court was not excessive to attract interference by this court.

6. Accordingly the appellant's appeal against sentence is hereby dismissed. The trial court sentence is hereby confirmed.

**DATED and DELIVERED at NANYUKI this 31<sup>ST</sup> day of OCTOBER 2017**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Dennis Kinyua .....

For the State: .....

Language: .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**