



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 116 OF 2016

RONY KAIMENYI MWALE APPELLANT

versus

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court Criminal Case No. 974 of 2015 by Hon. E. Ngigi Senior Resident Magistrate on 22nd January 2016)

JUDGMENT

1. **RONNY KAIMENYI MWALE** was charged and convicted before the Nanyuki Chief Magistrate's Court with **the offence of house breaking contrary to section 304 (1) and stealing contrary to section 279 (1) of the Penal Code**. His conviction was after trial. On being convicted the trial court considered that he was a first time offender but due to the gravity of the offence sentenced him to serve 4 years for the first limb of the offence and 2 years for the second limb of the offence. Both sentences were to run concurrently. After conviction and being aggrieved by his sentence he has presented this appeal.
2. He presented his submissions which he entitled as mitigation. He presented them under 3 grounds. That he is a first offender, that he has learnt his lesson and that he is remorseful and reformed.
3. The appeal against sentence was opposed by the Principal Prosecution Counsel Mr. Tanui. Learned counsel submitted that the case went through trial before the Chief Magistrate. He stated that on being convicted on both limbs that this court should consider that under **section 304** of the Penal Code the law prescribes a maximum sentence of up to 7 years. That however in the case of the appellant he was only sentenced to 4 years.
4. I have considered the submission of both the appellant and the respondent. In addition to the submissions by learned counsel Mr. Tanui in respect to the prescribed sentence under **section 304** of the Penal Code I would add that the maximum sentence under **section 279** of the Penal Code under which the second limb fell is 14 years imprisonment. The appellant on that second limb was sentenced to 2 years imprisonment.
5. It is important to reconsider that the appellant stole household items from his grandmother. His grandmother on 26th August 2015 had left her home to look for firewood. On returning to her home she found the wall of her house had been removed. On looking inside the house she found missing in her house a big sufuria, a pump, toolbox and a pair of shoes. She was fortunate to get a lead from a person who had seen the appellant going towards her home while holding a hammer. The appellant was eventually found in possession of her pair of shoes which she recognised because of a peculiar tear that they had. The other items of property were not recovered. Bearing that information in mind and

considering that an appellant court can only interfere with the trial court sentence if that sentence is manifestly excessive in the circumstances or if the trial court overlooked or took into account wrong factors or wrong material this court does not find that any of those factors apply in this case. Accordingly in the court's view the appellants appeal against sentence is without merit and accordingly it is dismissed. The trial court sentence is confirmed.

DATED and DELIVERED at NANYUKI this 31ST day of OCTOBER 2017

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Rony Kaimenyi Mwale.....

For the State:

Language:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE