



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 29 OF 2014

RODGERS KIPKOECH LAGAT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case No.2505 of 2013 Republic v Rodgers Kipkoech Lagat in the Resident Magistrates Court at Kapsabet by B. Limo, Resident Magistrate dated 4th September 2013)

JUDGMENT

1. The appellant pleaded guilty to *breaking into a building and committing a felony* contrary to section 306 (a) of the Penal Code. He was sentenced to *five years* imprisonment.
2. The offence occurred on the night of 2nd September 2013 at Chebarbar area of Nandi County. The appellant broke into the complainant's hotel. He stole 2 kilogrammes of cooked rice; 2 kilogrammes of cooked meat; and, a thermos flask all valued at Kshs 1,750.
3. The appellant has appealed *only* against the *sentence*. His petition of appeal was filed on 7th March 2014. There are four grounds: first, that he is aged seventeen and the sentence will impact negatively on his life; secondly, that he was a primary school student at the time of the offence; thirdly, that the complainant is a relative and has since forgiven him; and, fourthly, that he craves for leniency. At the hearing of the appeal, the appellant beseeched the court for mercy. For the avoidance of doubt, he confirmed that he was *not* challenging his conviction. In a synopsis, the entire appeal is a plea for *clemency*.
4. The appeal is contested by the Republic. The case for the State is that the sentence was lenient. I was implored to dismiss the appeal.
5. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190. I am satisfied that the plea of guilt was *unequivocal*.
6. Sentencing is at the discretion of the trial court. But power still reposes in this court to *review* the sentence if material factors were overlooked; or, the sentence was founded on erroneous principles. See *Amolo v Republic* [1991] KLR 392, *Omuse v Republic* [1989] KLR 214, *Macharia v Republic* [2003] 2 E.A 559, *Simon Muge Kipketer v Republic* Eldoret, Criminal Appeal 25 of 2014 [2015] eKLR.
7. Section 354 (3) of Criminal Procedure Code provides that at the hearing of an appeal-

“The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may.....(ii) alter the finding, maintain the sentence, or with or without altering the finding reduce or increase the sentence; or..... ”

8. In *Macharia v Republic* [2003] 2 E.A 559 the Court of Appeal had this to say on sentencing-

“The Court would not alter a sentence on the mere ground that if the members of the court had been trying the appellant they might have passed a somewhat different sentence and it would not ordinarily interfere with that discretion exercised by a trial judge, unless it was evident that the judge acted upon some wrong principles or overlooked some material factors. ...The sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and it was thus not proper exercise of discretion in sentencing for the Court to have failed to look at the facts and circumstances of the case in their entirety before settling for any given sentence.”

9. The appellant is a *first* offender. From the record of the lower court the appellant tendered the following mitigation: *“I pray for forgiveness”*. The learned trial Magistrate considered that the appellant was a first offender. He also took into account the mitigation offered. He sentenced the appellant to *five years* imprisonment. The plea for mercy before this court must be looked at through those lenses.
10. Section 306 (a) of the Penal Code provides for a sentence of up to *seven* years. The offence is a *felony*. The sentence meted out of *five years* was well *within* the law. The learned trial magistrate took into consideration that the appellant was a first offender and remorseful. This court will not alter a sentence on the mere ground that it might have passed a somewhat different sentence. See *Macharia v Republic* [2003] 2 E.A 559. It matters little that the appellant and complainant have since buried the hatchet.
11. The upshot is that the appeal has no merit and is dismissed.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 30th day of June 2016

GEORGE KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

The appellant.

Ms. B.Oduor for the Republic.

Mr. J. Kemboi, Court Clerk.