



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CRIMINAL APPEAL NO. 108 OF 2015**

**ALEX SAFARI MWATETE ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

(From the Original Conviction and sentence in the criminal case no. 327 of 2015 of the Chief Magistrate's Court at Malindi – S.R. Wewa, PM)

**JUDGEMENT**

The appellant was charged with two counts of breaking contrary to section 307 of the Penal Code. He was also charged with two counts of stealing contrary to section 268 (1) as read with section 275 of the Penal Code. He also faced a 5<sup>th</sup> Alternative count of handling stolen goods contrary to section 322 (1) as read with section 322 (2) of the Penal Code.

The appellant pleaded guilty to each count. The trial court convicted the appellant on the four main counts and sentenced him to serve two years imprisonment on each count. The sentences running concurrently. The grounds of appeal are that the appellant is a first offender, that he is remorseful, he did not waste the court's time, he is the sole bread winner for his family and that he has served a big portion of his sentence. The petitioner pleaded for leniency and informed the court that all his parents are deceased. He has a wife and four children. He is the eldest child and has three young brothers.

The prosecution opposed the appeal. Mr. Fedha submitted that the conviction is safe. The sentence is proper. The facts were read to the appellant who pleaded guilty. The appellant has served one year and should serve the remaining year.

The record of the trial court shows that the plea was taken on 15<sup>th</sup> June, 2015. The appellant pleaded guilty to the counts of breaking but pleaded not guilty to the counts of stealing. On 29<sup>th</sup> July, 2015 the appellant asked for the charges to be read afresh. He pleaded guilty to all the charges. The facts were read on 6<sup>th</sup> August, 2015 and the appellant pleaded guilty. Although there were four counts, the particulars of the offence were that the appellant on diverse dates between 5<sup>th</sup> May, 2015 and 9<sup>th</sup> June, 2015 broke into a school building and stole the properties of Joyce Zuhura Kithukilu. The value of the stolen properties is Kshs.22,800/=.

Given the record of the trial court, I do find that the plea was unequivocal. There was ample time for the appellant to reflect on his plea. Indeed, the appellant is not challenging the conviction but is pleading for leniency. I do find that the conviction is proper.

The second issue is that of sentence. Although there were four counts, the facts as read only relate to one incident whereby the value of the items stolen is Kshs.13,400/=. The count where the stolen items were worth Kshs.9,400/= seems not to have been considered. The appellant contends that he is a first offender and has a family. The incident occurred on 6<sup>th</sup> May, 2015 in the morning. The appellant has been in custody all that time. He was convicted and sentenced on 6<sup>th</sup> August, 2015. He has now served over one year in prison. Taking the fact that he appellant broke into a school and stole items meant for

the school, I do find that the two years imprisonment sentence is fair. There is no need to vary the sentence.

I have noted that the committal warrant to the prison does not indicate that the sentence is to run concurrently. There is likelihood of the appellant serving a long sentence. The appellant was sentenced to serve two years for each count and the sentence is running concurrently meaning that he will serve only two years.

In the end, the appeal lacks merit and is hereby disallowed. The appellant to serve two years imprisonment from the date of conviction.

**Dated and delivered in Malindi this 29<sup>th</sup> day of September, 2016.**

**S.J. CHITEMBWE**

**JUDGE**