



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO. 15 OF 2015

PETER KOGOI alias KEI.....APPLICANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from the Judgment of the Principal Magistrate's Court at Maralal Hon. C. N.

Ndegwa – Principal Magistrate delivered on the 9th December, 2014

in PMCR Case No. 875 of 2014)

JUDGMENT

The Appellant herein **PETER KOGOI alias KEI** has filed this appeal challenging his conviction and sentence by the learned Principal Magistrate sitting at the Maralal Law Courts.

The appellant was charged before the lower court on a first count of **HOUSE BREAKING CONTRARY TO SECTION 304(1)(b) and STEALING CONTRARY TO SECTION 279 (b) OF THE PENAL CODE**. The appellant faced a second count of **HANDLING SUSPECTED STOLEN PROPERTY CONTRARY TO SECTION 323 OF THE PENAL CODE**.

On 8th December, 2014 when the charges were read out to the appellant he entered a plea of '**Guilty**' to both counts. Thereafter the facts were read out to the appellant and his response was:-

“I have understood the facts. The facts are correct”

Thus the accused maintained his guilty. The trial magistrate proceeded to convict the appellant on his own plea of Guilty.

I have carefully perused the record. I am satisfied that the appellant's plea was properly taken in line with the guidelines in the celebrated case of **Aden Vs Republic**. I am satisfied that the appellant made an unequivocal plea of '**Guilty**' to Count No. 1. As such I find that his conviction on the first count was sound and I do confirm the same.

I note that the trial magistrate took the precaution of ordering an age assessment before sentencing the appellant. The age assessment report indicated that the appellant was aged 20 years. His sentence of 4 years imprisonment on each limb of the charge was both lawful and appropriate and I do uphold that

sentence.

However the trial magistrate proceeded to convict the appellant on Count No. 2 without inviting him to plead specifically to that count. Neither did the court read out to the appellant the facts related specifically to this 2nd count. In any event having convicted the appellant on the first count of Burglary and theft, it was duplicitous to convict him also on this 2nd count. Thus I quash the appellants conviction on Count No. 2 and set aside the sentence imposed therefore. To this extent only does the appeal succeed.

In summary the appellant's conviction on Count No. 1 is confirmed and his sentence of 4 years imprisonment on each limb is upheld. The sentences to run concurrently from the date of first conviction in the trial court.

Dated in Nakuru this 14th day of October, 2016.

Appellant in person

Mr. Motende for State

M. Odero

Judge

14/10/2016