



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 23 OF 2014

ABDI NOOR IBRAHIM APPELLANT

VERSUS

REPUBLIC RESPONDENT

***(An Appeal from the Judgment of the Resident Magistrate Honourable B. LIMO in KAPSABET
Criminal Case No. 2521 of 2013, dated 9th September, 2013)***

JUDGMENT

1. The appellant *Abdi Noor Ibrahim* was convicted on his own plea of guilty with the offence of burglary and stealing contrary to *Section 304 (2)* as read with *Section 279(b)* of the *Penal Code*. He admitted that on the night of 4th and 5th September 2013 at Kapsabet township in Nandi County, he broke and entered the dwelling house of *Pascolia Jepchirchir* with intent to steal and did steal from therein two mattresses, two blankets, three bedsheets, one curtain, six cushions, one suitcase, assorted kitchen utensils and Kshs.10,000 all valued at Kshs.18,580 the property of *Pascolia Jepchirchir*.
2. Upon conviction, the appellant was sentenced to seven years imprisonment in each limb of the offence. The sentences were ordered to run concurrently.
3. Aggrieved by the sentence meted out against him, the appellant lodged the instant appeal to the High Court. In his petition of appeal titled “Mitigation Appeal”, the appellant beseeched this court to review and reduce the sentence passed against him mainly on grounds that the sentence negatively impacted on him and his dependants; that he had learnt his lesson the hard way and was now ready to be a law abiding citizen. At the hearing of the appeal, the appellant submitted that the sentence was manifestly excessive; that he had learnt some skills in prison which he shall use to earn a living if his appeal was successful.
4. The state opposed the appeal. Learned prosecuting counsel *Ms Oduor* submitted that the sentence was lawful as the law prescribed a sentence of 14 years for the offence of burglary and stealing; that the sentence of seven years imprisonment was commensurate to the offences the appellant had committed and the same ought to be upheld.
5. I have considered the appeal and the submissions made by both the state and the appellant. I concur with the learned state counsel that the sentence imposed on the appellant was lawful although her submission that the sentence prescribed by the law for the offences is 14 years imprisonment is incorrect. This is only correct in so far as the offence of stealing contrary to *Section 279 (b)* of the *Penal code* is concerned but is wrong with respect to the 1st limb concerning the offence of burglary. *Section 304 (2)* of

the *Penal Code* which creates the offence prescribes a maximum sentence of Seven years imprisonment.

6. It is trite that sentencing is at the discretion of the trial court but that discretion must be exercised judiciously depending on the circumstances of each case. In this case, the lower courts record shows that the appellant was a first offender. It also shows that most of the stolen items were recovered and released to the complainant.

7. In the above circumstances, it is my finding that a sentence of seven years imprisonment for each limb of the offence for a first offender was harsh and manifestly excessive especially when one considers the nature and value of the stolen items as well as the fact that most of them were recovered. The record shows that the appellant was convicted and sentenced on 9th September, 2013. This means that he has todate served a term of about 3 year's imprisonment. In my opinion, this constitutes sufficient punishment for the offence that the appellant committed.

8. In view of the foregoing, I am satisfied that this appeal is merited and it is hereby allowed. I consequently set aside the sentence of seven years imprisonment imposed by the trial court for each limb of the offence of burglary and stealing and substitute it to the term already served. The appellant is therefore set free forthwith unless otherwise lawfully held.

9. It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 16th day of November, 2016

In the presence of:

Appellant

Ms Oduor for the state

Naomi Chonde court clerk