

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. 51 OF 2015

ISAIAH KIPROTICH LANGAT.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in criminal case no. 70 of 2013 PM's Court Sotik – Hon Barasa – RM)

JUDGMENT

The appellant above mentioned was convicted and sentenced to seven (7) years imprisonment for the offence of burglary C/S 304 (2) and stealing C/S 279(b) of the Penal Code.

The particulars being that on the night of the 26th and 27th January 2013 at Rotik village in Sotik Bomet county jointly, broke and entered the dwelling house of Anthony Korir with intent to steal and did steal from therein, one gas cylinder, one bed, one table, curtains and household utensils, the property of the said Anthony Korir the said items being of the value of Kshs.23870/=.

The appellant pleaded guilty to the charges and he was convicted on his own plea. He was treated as a first offender. On the first limb of the charge he was sentenced to 4 years imprisonment. On the 2nd limb he was sentenced to three years imprisonment and sentence was ordered to run consecutively.

He was in effect sentenced to seven years. The appeal is opposed. The prosecution places reliance on the court of appeal decision in the case of Kennedy Indiana Omosa –V- R.

It is noted that in that case, the appellant had been charged in five counts. He was not a first offender.

In the instant case, the appellant was charged with the one count of burglary and stealing.

He pleaded guilty to the charge. He did not waste courts precious time. He was a first offender. The circumstances surrounding the burglary were not aggravated in nature.

The value of the stolen items was in the tune of Kshs23,000/=. This is a case where it would have been appropriate for the sentences to have been ordered to run concurrently but not consecutively. The sentence was harsh.

The sentences of 4 years imprisonment on the first limb and that of three years on the 2nd limb is hereby ordered to run concurrently as opposed to consecutively. The appellant will serve 4 years imprisonment instead of seven years.

In the event, that he has served four years to be set at liberty forthwith. The appeal succeeds to that extent.

Judgment delivered dated and signed this 14th day of December 2016 in open court and in the presence of Miss Gitahi for the Respondent and the Appellant.

M. MUYA

JUDGE

14/12/16