



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 398 OF 2013

(Appeal against sentence only in Thika CM Criminal Case No 4461 of 2012 D A Orimba, PM)

PATRICK KIMEU MWANZIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant, **Patrick Kimeu Mwanzia**, and his co-accused were on 22/10/2012 convicted in the court below upon their own plea of **house-breaking and stealing** contrary to **sections 304 (1) (b) and 279 (b)** of the **Penal Code**. They were each sentenced to serve 3 years imprisonment in the first limb of the charge and 5 years imprisonment in the second limb, the sentences to run **consecutively**.

2. The Appellant has appealed against sentence only. The registry has checked the criminal appeals registers for 2012, 2013, 2014 and 2015. No appeal by the Appellant's co-accused, **Joseph Makau Mutua**, was found.

3. In sentencing the Appellant and his co-accused the trial court stated –

“Accused (persons) pleaded guilty.They are first offenders.I have considered the mitigations.....”

The Appellant's plea in mitigation was-

“I pray for mercy. I will return the other items which are at home.”

4. The stolen items as per the charge sheet were one *Samsung Mini Galaxy* mobile phone, one *Ideos* mobile phone, one digital *Olympius* recorder, and one pair of slippers (all valued at KShs 43,100/00) and cash Kshs.1,500/00.

5. Learned **Senior Principal Prosecution Counsel**, Mr. Njeru, does not support the order for the sentences to run consecutively, but he otherwise supports the sentences which in his view were merited. He pointed out that the maximum sentence for house-breaking is 7 years imprisonment while that for theft from a dwelling house is 14 years imprisonment.

6. Ordinarily where two or more offences are committed in the same transaction and at the same time, any sentences of imprisonment imposed would be ordered to run **concurrently**. In the present case, the

trial court's order had the effect of condemning the Appellant to a cumulative sentence of eight (8) years imprisonment. No reasons were given why the sentences should run consecutively and not concurrently as they ordinarily should.

7. As for the individual sentences themselves, they were richly deserved; a large number of items worth a substantial amount of money were stolen from the dwelling house broken into.

8. In the result, I will allow the appeal against sentence but to the limited extent only that the sentences of 3 and 5 years imposed shall run *concurrently* from the date of sentencing and **not** consecutively as ordered by the trial court. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 29TH DAY OF APRIL 2015

H.P.G.WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 30TH DAY OF APRIL 2015