

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEALS NOS. 159 AND 160 OF 2012 (CONSOLIDATED)

NYOMO KAUNGU.....1ST APPELLANT

SAMSON NGUMBAO MUTIO.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Machakos Chief Magistrate's Court Criminal Case No. 174 of 2012 by Hon. E. K. Too, RM on 20/5/2012)

JUDGMENT

1. **Nyomo Kaungu** and **Samson Ngumbao** hereinafter "*the 1st and 2nd appellants*" respectively were charged as follows:

Count 1: Breaking into a building and committing a felony contrary to **Section 306(A) of the Penal Code**. Particulars of the offence being that on the night of **23rd and 24th January 2012** at **Kenya Israel, Mumbuni Location** in **Machakos County** within **Eastern Province**, jointly broke into a building namely a shop of **Jonathan Muasya Kinuthia** and committed a felony therein namely theft and did steal 1 dozen of blue band 100g each, 38 sachets each 12gms **Cardbury Cocoa**, 16 sachets **Cardbury Cocoa** each 20gms, 2 bottles of soda, 8 pieces of **Topex**, 2kgms wheat flour, 7 pieces of bar soaps, 18 pieces of **Kiko**, 10 pieces tablets of **Tumbocid**, 9 pieces of **Panadol**, 4 pieces of **Vaseline**, 3¾kgs of sugar, 3 exercise books, 1 packet of sweets, 15 pieces of **Dawanol**, 1 pair of shoes, 13 pieces of clothes, 1 dozen of **Bic pens**, 3 pieces of **Kimbo fat** 100gms each, 9 pieces **Cowboy**, 3 boxes of matchbox, 30 packets of tea leaves, 2 loaves of bread, 34 sachets of kahawa, 10 tins of **Toss**, 8 pieces of **Beauty jelly**, 53 sachets of **Omo**, 58 sachets of **Sunlight**, 5 pieces **Geisha soap**, 10 packets of milk, 1 dozen of **Colgate**, 2¾kgs of beans, 5 pieces of **Chestcof tables** all valued at **Ksh.18,086/=** the property of **Jonathan Muasya Kinuthia**.

Count 2: Breaking into a building and committing a felony contrary to **Section 306(A) of the Penal Code**. Particulars of the offence being that on the night of **23rd and 24th January 2012**, at **Kenya Israel, Mumbuni Location** in **Machakos County** within **Eastern Province**, jointly broke into a building namely an office of **Anastacia King'oo** and committed a felony therein namely theft and did steal 1 Television make great wall, 1 DVD player make **Sumsang**, 2 sewing machines make **Butterfly**, 1 radio make **Proclaimer** all valued at **Kshs.30,500/=** the property of **Anastacia King'oo**.

2. In the alternative they are charged with handling stolen property contrary to **Section 322(2) of the Penal Code**. The particulars of the offence being that on the **24th day of January 2012**, at **Kenya Israel, Mumbuni Location** in **Machakos County** within **Eastern Province**, otherwise than in the course of stealing dishonestly received or retained one radio make **Proclaimer** knowing or having reasons to believe it to be stolen property or unlawfully obtained.
3. The two (2) appellants pleaded guilty at the outset and were convicted. They were sentenced to serve **three (3) years imprisonment** on each count. By the court's order the sentences were to run consecutively. Each appellant was hence required to serve **six (6) years imprisonment**.

4. Pursuant to leave of the court to appeal out of time they now mitigate on sentence. The 1st appellant in his grounds of appeal state that he was a first offender and under age. He asked for a non-custodial sentence. The 2nd appellant on the other hand who stated that he is **21 years old** and asked the court to consider his age.
5. At the hearing both appellants called upon the court to consider interfering with the sentence as they were now rehabilitated and would be useful to the society at large.
6. The appellants herein were young adults and 1st offenders. It behooved upon the trial court to consider this particular fact. They would have benefited from a non-custodial sentence. Since they have served more than **three (3) years imprisonment**, I hereby reduce the sentence to the term already served.
7. Each appellant shall be released forthwith unless otherwise lawfully held.
8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 22ND day of APRIL, 2015.

L.N. MUTENDE

JUDGE