

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 6 OF 2015

BETWEEN

TAZAM ODHIAMBO OWINO.....APPELLANT

AND

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence of Hon.S.N. Makila, RM in Oyugis Ag. Chief Magistrates Court Criminal Case No. 409 of 2013 dated 14th June 2013)

JUDGMENT

1. The appellant, **TAZAM ODHIAMBO OWINO**, was charged with the offence of house breaking and stealing contrary to **section 304(1)** and stealing contrary to **section 279(b)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. He pleaded guilty was convicted and sentenced to 7 years imprisonment. The appellant's appeal is against the sentence.
2. In the petition grounds filed on 19th December 2014, he urges the court to consider reducing the sentence of 7 years imprisonment to a reasonable one as he is married with two children who are solely dependent on him and his continued stay in prison will harm their education. He states that should the sentence be reconsidered he will abide by the law and shun criminal activity.
3. Sentencing is essentially the discretion of the sentencing court. An appellate court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor or that it failed to take into account a relevant factor, or that it applied a wrong principle or short of these the sentence is so harsh and excessive that an error of principle must be inferred
4. The main consideration the learned magistrate took into account was that the appellant was a repeat offender. It is not in dispute that the appellant was charged and convicted of the offence of house breaking and stealing in *Oyugis Criminal Case No. 1058 of 2009* where he was sentenced to 3 years imprisonment which he served and was released.
5. Given the fact that the appellant was a repeat offender, a non-custodial sentence was out of the question and a higher custodial sentence was warranted. I however find the imposition of the maximum term of imprisonment on the higher side. I reduce the term of imprisonment to 5 years.

DATED and DELIVERED at HOMA BAY this 31st July 2015.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.