



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 117 OF 2012

HASSAN MBWANA CHANGOMA APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 918 of 2010 of the Principal Magistrate's Court at Kwale – **Hon. Aminga - RM**)

JUDGMENT

The Appellant was Convicted and Sentenced to five (5) years Imprisonment for the offence of house breaking and stealing contrary to section 304 (1) and stealing contrary to section 279 of the Penal Code. On the 2nd limb he was Sentenced to one year imprisonment.

On 8th June, 2010 which was the date of plea the Appellant had pleaded not guilty and the case was set down for hearing on 16th September, 2010.

One Witness (PW 1) the Complainant testified. On 15th April, 2011 the Appellant indicated that he was desirous of changing plea.

On 18th April, 2011 the charge was read to him before another magistrate as the previous one had recused herself on account of having handled another similar matter involving the accused. He pleaded guilty. Facts were read over to him and he admitted them. He was Convicted on his own plea. The prosecution indicated that he was not a first offender as he had been committed and Sentenced in Kwale Criminal case No. 315 of 2002 for Eighteen (18) months and in Criminal case No. 1946 of 2005 stealing from a dwelling house and Sentenced to Six months.

His appeal is on the Sentence imposed. In his submissions it is argued that the imprisonment term is harsh.

As noted herein above the appellant is not a first offender. He had two previous Convictions of similar nature, which were committed when he was out on bond. An application for bond pending appeal was heard and rejected.

The Sentence of five (5) years imprisonment is for house breaking and stealing is not manifestly harsh and excessive considering the fact that he is not a first offender.

The charge carries a maximum of seven years imprisonment.

I find no reason to disturb the Conviction and Sentence. The appeal has no merit and it is dismissed accordingly.

Judgment delivered dated and signed this **27th** day of **February, 2014**.

M. MUYA

JUDGE

27TH FEBRUARY, 2014

In the presence of:-

Learned State Counsel Miss Fundi

The Appellant present

Court clerk Musundi