



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 139 OF 2011

OMAR SULEIMAN KIBWEBWEAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 1741 of 2010 of the Senior Principal Magistrate's Court at Kwale – Hon. Aminga - RM)

JUDGMENT

The Appellant was Convicted and Sentenced to three (3) years imprisonment in respect of the 1st Count of burglary and stealing contrary to Section 304 (2) and 279 (b) of the Penal Code and on the 2nd Count to three (3) years imprisonment.

The Sentence was ordered to run consecutively.

A detailed breakdown shows that on the first limb of the first Count he was Sentenced to three (3) years imprisonment and the Second limb one (1) year.

On the 2nd Count on the first limb he was Sentenced to three (3) years imprisonment. On the 2nd limb he was Sentenced to one year imprisonment.

Though initially the appeal was both on Conviction and Sentence the appellant appears to have abandoned the grounds on Conviction and mainly factored issues on mitigating the Sentence. The appellant appears to labour under the impression that he was Sentenced to eight (8) years imprisonment. There is indeed confusion as it is not indicated whether the imprisonment term of three (3) years on 1st limb and one year (1) imprisonment on the 2nd limb would run consecutively or concurrently for avoidance of doubt and set the record correct the order for the Sentences to run consecutively is hereby varied to that of concurrent Sentence.

The Sentences on both Counts 1 and 2 will therefore run concurrently. The upshot is that the Appellant will serve a term of three (3) years imprisonment only.

In the event he has served that term to be set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this 31st day of March, 2014.

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M. MUYA

JUDGE

31ST MARCH, 2014

In the presence of:-

Learned State Counsel Miss Mwaura

Appellant present

Court clerk Musundi