

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 295 OF 2012

(Appeal against conviction and sentence arising from the judgment of [H. WANDERE, P.M.] delivered on 14.11.12 in Mumias Senior Principal Magistrate's Court in Criminal Case No.974 of 2012)

CALEB MULIMO APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was charged with the offence of burglary **contrary to section 304(2)** and stealing contrary to **section 279(b)** of the **Penal Code**. The particulars of the offence were that the appellant *on the night of 19th and 20th October 2012 at Lucheka village, Mayoni sub-location in Matungu district within Kakamega County broke and entered the dwelling house of ZAINAB ATIENO with intent to steal therein and did steal therein one jeans skirt, one blouse, one coat, one dress, one bag and other assorted clothes valued at KShs.6,000/= the property of ZAINAB ATIENO.*

The appellant was also charge with an alternative charge of handling stolen property contrary to **section 322(2)** of the **Penal Code**. The appellant pleaded guilty to both counts and was sentenced to serve 10 years imprisonment each on the two limbs of the main charge. The sentence is to run concurrently. The grounds of appeal are that he did not plead guilty, the sentence is too harsh, his mitigation was not considered, the evidence on record was not considered and his defence created doubt on the prosecution case. During the hearing of the appeal the appellant submitted that he pleaded guilty to the charge and was only praying for leniency as the sentence is quite long. Mr. Oroni, State Counsel opposed the appeal and submitted that a social inquiry report did not favour the appellant.

The record of the trial court shows that the appellant was arraigned before the court on the 30.10.2012 and pleaded guilty to the main charge. The facts were read over to him and he once again pleaded guilty. He was convicted on his own plea of guilty. The appellant was given time to mitigate and he informed the court that he wanted to be pardoned. The trial magistrate ordered for a social inquiry report and the same was prepared by **BERNARD WANGATIA**, a Probation officer. Although the prosecution had indicated that the appellant was a first offender the social inquiry report shows that the appellant had been involved in several cases and was at one time sentenced to serve four years imprisonment for assaulting the village elder. The appellant has also been involved in other criminal offences.

Given the evidence on record I do find that the appellant pleaded guilty and was properly convicted. He contends that the sentence is too long. I have looked at the social inquiry report and it is clear that the appellant is a perpetual offender. However, taking into account the facts of the case especially the items that were allegedly stolen, I do find that 10 years imprisonment is quite excessive. I will set aside the sentence and replace it with 5 years' imprisonment for each limb of the offence from the date of conviction. The sentence shall run concurrently.

Delivered, dated and signed at Kakamega this 26th day of June 2014

SAID J. CHITEMBWE

JUDGE