

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 57 OF 2012

MARY WAMBUI WAMALWAACCUSED

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. 651 of 2011 of the Principal Magistrate's Court at Githunguri).

JUDGMENT

The appellant Mary Wambui Wamalwa was charged with two offences. In count I she was charged with the offence of breaking into a building and committing a felony contrary to Section 306 (a) of the Penal code. In count II she was charged with the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code.

She denied the offences but after the trial she was convicted and sentenced to pay a fine of Kshs. 70,000/= in default to serve seven years imprisonment in count I and in count II she was sentenced to pay a fine of Kshs. 40,000/= in default to serve five years imprisonment. She was aggrieved by the said judgment and lodged this appeal. Although the appeal was against both the conviction and sentence, at the hearing she confined herself to the sentence only.

The learned counsel for the state conceded the appeal and referred the court to Section 28 of the Penal Code. Going by the provisions of the said Section, the appellant having been fined Kshs. 70,000/= in count I the default sentence is limited to twelve months. On the other hand, with respect to count II where the fine imposed was Kshs. 40,000/=, the default sentence is six months imprisonment. Under Section 342 of the Criminal Procedure Code, no commitment for nonpayment of a fine shall be for a longer period than six months unless the law under which the conviction has taken place enjoins or allows a longer period.

Under both Sections 306(a) and 251 of the Penal Code, no minimum sentence of imprisonment is provided. Therefore, the learned trial magistrate was entitled to impose a fine provided that default sentences complied with the law. – see Section 26 of the Penal Code.

The learned trial magistrate having failed to comply with the law with regard to default sentences of imprisonment, I agree with the learned state counsel that this appeal should be allowed. Accordingly the appeal is allowed on sentence. Since going by the computation of the time already served the appellant has served the default sentences for both counts for those reasons the appellant was set free on 3rd July, 2014.

Orders accordingly.

Dated and delivered at Nairobi this 22nd day of July, 2014.

A. MBOGHOLI MSAGHA

JUDGE