



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISI
CRIMINAL APPEAL NO. 193 OF 2012

SAKAJA SHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. This appeal is brought by one **Sakaja Shira**. It arises from the original conviction and sentence of the P.M's court at Kilgoris in Criminal Case No. 573 of 2012, being aggrieved and dissatisfied with both sentence and conviction of five (5) years as was passed thereof on 26.07.2012 by Hon. A. K. Mokeross- R.N for the offence of house breaking and stealing contrary to **S.304(1)** and **279(b)** of the **Penal Code**.
2. The appellant's grounds of appeal were set out as follows:-
 1. *That I pleaded guilty of the convicted charges at my first day of appearing in court.*
 2. *That I was treated as a first offender and your honour the sentence be imposed on me was rather on the higher side.*
 3. *That I was still of tender age and my continued stay in prison may impact negatively on my life.*
 4. *That I was remorseful at the time of committing this offence and now repentant and therefore request your honorable court to grant me leniency as promise to be a good citizen.*
 5. *That I pray this appeal be considered on the above grounds and the honorable court put me on a non-custodial sentence reduce the sentence to the period already served or any other order that the honorable court may deem fit.*
3. The respondents response was as follows:- The charge sheet herein was duplex i.e. two charges is one count. This, in my view, is inappropriate the appellant was, accordingly, sentenced two years for stealing and three years for house breaking. The sentence was to run concurrently.
4. This is illegal, thus I am constrained to concede to this appeal. The appellant pleaded guilty to what is prima facie an illegal charge. He was convicted on 26th July, 2012. He has been in prison, now, for two years.
5. From the concession by the prosecutor that the charge with which the appellant was charged was, in their view, duplex and thus illegal. The court finds that the appellant who has been in prison for now two years has been serving what appears to be an illegal sentence. The court has a discretion either to set the appellant free and/or order for a re-trial before a different magistrate.
6. This court feels that since has served already two years arising from an illegal charge, the best for the appellant is to be set free, which I hereby do, unless he is lawfully held on some other offence.
7. It is so ordered.

Judgment dated and delivered at KISII this 19th day of December, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence:-

Appellant in person.

Otieno for the respondent

Edwin Mongare Court Clerk.