

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 69 OF 2014

BETWEEN

DENNIS OKAY ACHIEL..... APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the original conviction and sentence in Criminal Case No. 1651 of 2006 at the Senior Resident Magistrates Court at Homa Bay, Hon. E. K. Mwaita , Ag SRM, dated 4th April 2007)

JUDGMENT

1. The appellant was convicted on a total of 10 counts of school breaking and committing a felony contrary to **section 306(a)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The offences were committed between 23rd and 24th December 2006 at Asumbi Girls Secondary School. The appellant broke into the school and stole several items belonging to the students.
2. He was tried and convicted on all the ten counts and sentenced to seven years imprisonment on all the counts. The learned magistrate ordered that the sentence on count 1 and 2 to run consecutively and those on counts 3 to 10 to run concurrently. The effect of the sentence is the appellant will serve 14 years in prison.
3. The appellant abandoned his appeal on conviction and urged that the sentence was harsh and excessive. Mr Oluoch, counsel for the State, conceded the appeal on the ground that the learned magistrate erred in imposing a concurrent sentence without any reason or explanation.
4. The appellate court is entitled to intervene in a sentence where there is an error of principle. In this case, all the offences were committed on one night and there was no reason given by the learned magistrate to impose consecutive sentences on the 2 counts when the offences proved were as a result of one transaction.
5. In the circumstances, the consecutive sentences for count 1 and 2 are set aside and substituted with concurrent sentences.
6. The appeal succeeds to that extent and since the appellant has served the 7 years imprisonment, he is set free unless otherwise lawfully held.

DATED and DELIVERED at HOMA BAY this 17th day of December 2014

D.S. MAJANJA

JUDGE