



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO.132 OF 2013

BRIAN ODUOR OMOLLO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

For the purposes of this judgment I shall deliberately consolidate this matter with file no. 134 of 2013 between David Omondi Ngira who is a co-appellant. Both of them were charged in the same matter and their Petition of Appeal are similar word for word. This shall save the precious judicial time.

Both were charged with several offences of stealing namely:

Count I: School Breaking and Committing a felony contrary to section 306 (a) (b) of the Penal Code.

Particulars: Brian Oduor Omollo, David Omondi Ngira, Patrick Omondi Anyango and Japheth Odongo Ogutu on the night of 5th and 6th day of September 2013 at Anyiko sub location in Gem District within Siaya County jointly with others not before court broke and entered a building namely school of Anyiko primary and committed therein a felony namely theft.

Count II: Stealing contrary to section 279 (b) of the Penal Code.

Particulars: Brian Oduor Omollo, David Omondi Ngira, Patrick Omondi Anyango and Japheth Odongo Ogutu on the night of 5th and 6th day of September 2013 at Anyiko sub location in Gem District within Siaya County jointly with others not before court stole six shutter doors, three rolls of chicken wire, one wheel barrow, five water pipes two tables, one toilet door, one gong bell and 21 pieces of half iron sheets all valued at Kshs. 37,000/= the property of Anyiko primary school from the store of the said Anyiko primary school.

Alternative Charge: Handling Stolen Goods contrary to section 322 (2) of the Penal Code.

Particulars: Brian Oduor Omollo, Patrick Omondi Anyango on the night of 6th day of September 2013 at Anyiko sub location in Gem District within Siaya County otherwise that in the course of stealing dishonestly received or retained one shutter door knowing or having reason to believe to be stolen goods

Each one of them pleaded to the charge and were sentenced to serve 6 years imprisonment. The complainant herein Anyiko primary school where the two together with others broke into it and stole the various assorted items.

The substance of their appeal is purely mitigation. They are praying that this court should interfere with the sentence and reduce it. The question of interfering with the sentence on appeal is well settled. The court can only interfere if the same was unlawful, excessive or there was apparent error on the face of record. In this matter there was no procedural error done by the court. The period provided for such an offence is 7 years. The court mete rule out 6 years against the appellants.

I have perused their submissions which appear remorseful. David Omondi Ngira has further enrolled himself in a theological training within the prison. Brian Oduor has equally advanced other reasons as to why he thinks this court should consider their plea.

Having heard the appellants as well as the respondent, there is no doubt that the appellant stole public property. They readily admitted so. They should therefore be allowed to serve the consequences of their choice. I however note that they are young and energetic and that they should put their energies into a useful course.

In light of the above observation I shall interfere with the sentence by reducing the 6 years period meted by trial court lawfully and order that they serve three (3) years from the date of the judgment of the trial court.

Orders accordingly.

Dated, signed and delivered at Kisumu this 9th day of December, 2014.

H.K CHEMITEI

JUDGE