



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 569 of 2010

REPUBLICRESPONDENT

VERSUS

PAUL KIMAN & 2 OTHERS APPELLANT

From original conviction and sentence in Criminal Case Number 2953 of 2008 in the Chief Magistrate's court at Mrs. Kasera (SRM) on 18th May, 2010)

JUDGMENT

The appellant was convicted of the offence of breaking into a building and committing a felony contrary to Section 306 (a) of the Penal code and sentenced to five years imprisonment. He filed an appeal which appears to address the issue of sentence only.

In his petition of appeal he has stated that he is an orphan and his siblings depend on him. He was also a first offender and is most remorseful. During the trial, he was in remand and at the time of conviction he had spent two years in remand prison. It is his position that the sentence was excessive.

The learned counsel for the Republic has made similar observations in her submissions. I have taken into consideration the nature of the offence. The punishment provided on conviction is that the accused is liable to imprisonment for seven years. During the trial as the appellant correctly states, he was in custody and at the time of conviction had spent about two years in remand. So far he has spent another two years and nine months following the conviction.

Being a first offender, I consider the sentence imposed by the learned trial magistrate to be excessive. I also note that the learned trial magistrate did not take into consideration the provisions of Section 333 (2) of the Criminal Procedure Code, the proviso thereto. That Section provides that where a person is sentenced, and prior to that sentence he had been held in custody, the sentence shall take account the period spent in custody.

It is my considered view that the period spent in custody during the trial, and imprisonment after conviction is sufficient punishment for the offence committed.

Accordingly this appeal is allowed by reducing the sentence from 5 years imprisonment to the period already served by the appellant such that he shall be released forthwith unless otherwise lawfully held.

Orders accordingly.

Dated and delivered at Nairobi this 14th day of March, 2013.

A. MBOGHOLI MSAGHA
JUDGE