



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 33 of 2012

PETER ETABO IRKOLE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No.2354 of 2011 of the Principal Magistrate's Court at Nyahururu – V. K. KIPTOON, RM)

JUDGMENT

Peter Etabo Irkole was charged with the offence of breaking into a building and committing a felony contrary to **Section 306(a)** of the **Penal Code**. He is alleged to have broken into a building on the night of 3rd and 4th December 2011 and stolen three chicken worth Kshs.1,500/- from therein.

In the alternative, he was charged with handling stolen goods contrary to **Section 322(2)** of the **Penal Code**. After a full trial, he was found guilty on the main charge was convicted and sentenced to seven years imprisonment.

The appellant filed an appeal challenging both the conviction and sentence. However, at the hearing of the appeal, he abandoned the appeal on conviction and only urged his appeal on sentence. His grounds of appeal were mere mitigation. He prayed that he is a family man with a wife and children; has no parents and that he has reformed during this period he has been in prison.

Mr. Chirchir, Learned Counsel for the State did not oppose the appeal on sentence. He submitted that taking into account the property that was stolen i.e. chicken, and the fact that they were recovered, the sentence, which was the maximum was too harsh.

Having considered all the circumstances under which the offence was committed in that the goods stolen were three chicken which were recovered in the possession of the appellant on the next day, I do agree that the sentence meted on the appellant was excessive and harsh. The appellant did not have any previous records. The trial court gave the appellant the maximum sentence despite the fact that the appellant had been treated as a first offender. The appellant was sentenced to a prison sentence on 16/2/2012. So far he has served one year and about 2 months. Having found the sentence to be harsh, I hereby set aside the sentence and instead substitute it with one year, two months, the term so far served. The appellant will therefore be set at liberty forthwith unless otherwise lawfully held.

DATED and DELIVERED this 26th day of April, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

The appellant present in person

Mr. Chirchir for the State

Stephen Mwnagi – Court Clerk