



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 96 of 2012

ZACHARIA MWANGI NJERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No.2996 of 2010 in the Principal Magistrate's Court at Nyahururu - D.N. MUSYOKA (SRM))

JUDGMENT

The appellant, Zacharia Mwangi Njeri, was charged jointly with Daniel Kinyua Gichuhi for the offence of burglary and stealing contrary to **Section 304(2)** and **279(b)** of the **Penal Code**. In the alternative, the appellant was charged with the offence of handling stolen property contrary to **Section 322(2)** of the **Penal Code**. Both the appellant and the co-accused pleaded guilty to the main charge and were convicted and sentenced to serve 7 years imprisonment. The appellant being dissatisfied with the sentence preferred this appeal. His grounds of appeal are as follows:-

- 1. That he was sentenced to serve 3 years imprisonment in Criminal Case No. 2845/08 and he pleads that the court do order that the sentence in that case and this case do run concurrently;**
- 2. That the appellant has undergone a number of trainings while in prison, has undergone counseling and has reformed;**
- 3. That he is remorseful and asks for mercy.**

The learned State Counsel Mr. Chirchir opposed the appeal. He urged that the sentence of 7 years imprisonment is not harsh or excessive because the maximum sentence for the offence the appellant was convicted with is 14 years; that the trial court considered the fact that the appellant is a habitual offender as he had committed similar offences there before in 2007 and 2008.

I have now considered both the grounds of appeal and the reply by the Learned State Counsel. The appellant requested that the sentence in Criminal Case No. 2845/08 and this case be ordered to run concurrently. Unfortunately, the file in Criminal Case No. 2845/08 was not availed to the court. But the record of the trial court indicates that the appellant was charged with the offence of stock theft in Nyahururu Criminal Case No.2845/08 and that he was convicted and sentenced to 3 years which he served and was released in November 2010. It means that by the time he was convicted and sentenced in this matter on 14/12/2010, he had already completed serving the term in Criminal Case No. 2845/08. This court cannot therefore grant his prayer that the sentence in Criminal Case No. 2845/08 and Criminal Case

No. 2996/2010 which he is currently serving do run concurrently. That prayer is overtaken by events.

When addressing the court after the court had found the appellant guilty, the prosecution said that in 2007 the appellant had been fined Kshs.10,000/- or 6 months imprisonment by Chief Magistrate, Nakuru in Criminal Case No. 1158/07 for a similar offence of breaking and stealing. In 2008 he was arrested and convicted for stock theft in Criminal Case No. 2845/08 in 2010. Sentence is supposed to be corrective measure and punishment or to act as a deterrent. It seems, however, that from 2007, the appellant has continued to commit one offence after another. The sentences that were meted upon him have not served to correct him or deter him from committing other offences. Although the appellant pleaded guilty to the offence, the circumstances call for imposing of a deterrent sentence. I do find that the sentence imposed by the trial magistrate is neither harsh nor excessive in the circumstances. I find no good reason to interfere with the sentence and I hereby confirm the sentence and dismiss the appeal. It is so ordered.

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

Kennedy – Court Clerk