



**REPUBLIC OF KENYA**

**High Court at Busia**

**Criminal Appeal 21 of 2012**

**RAPHAEL KINGI ADENYA .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**J U D G M E N T**

1) The Appellant pleaded guilty to two Counts of House Breaking and Stealing Contrary to Section 304(1) and 279(b) of The Penal Code. It was following this conviction that he was sentenced to 4 years imprisonment for each Count and the sentence would run concurrently. That sentence has aggrieved him and is the subject of this appeal.

2) The Appellant sought a review of his sentence on the following grounds:

- a) He had pleaded guilty.
- b) The stolen items were recovered.
- c) He is the sole bread winner of his family.
- d) He was remorseful.

3) The State opposed the appeal. It would be urged that the sentence was legal and in fact lenient. The maximum sentence for House Breaking Contrary to Section 304 (1) is 7 (seven) years and that for Stealing under Section 279(b) is 14 years. For this reason, it was argued, the sentence of 4 years that the trial Court meted was charitable.

4) The principles upon which an Appellate Court should interfere with sentence of a trial Court are well known. An Appellate Court,

**“should not interfere with the discretion which a trial Court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial fact, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the issue” (Trevelyan J in Wanjema –vs- Republic [1972] EA 493).**

And of course, an illegal sentence will be revisited.

5) These are the proceedings on sentence;

**Court – Accused 1 is convicted on his own plea of guilty.**

**Court prosecutor – 1<sup>st</sup> offender.**

**MITIGATION ACCUSED 1**

**I say with my mother alone. I ask court to assist me.**

**COURT**

**Accused is sentenced to 4 years imprisonment for each count and limbs. The sentence will run concurrently. Right of appeal within 14 days.**

**E.H. KEAGO**

**SENIOR RESIDENT MAGISTRATE**

6) It is clear, the trial Court did not proffer any reasons for the sentence imposed. This Court has previously (**Busia HC Criminal Appeal No.53 of 2012 Joseph Nyongesa –vs- Republic**) emphasized the desirability of sentencing Courts stating, even if terse, the factors considered at arriving at its decision. The reason is obvious. All stakeholders to the proceedings ought to know why a particular sentence was imposed. The stakeholders would be the accused, the victim and the prosecution. Sometimes it would include the general public. And on appeal, helps an Appellate Court give an objective assessment of the decision.

7) That said this Court is unable to interfere with the sentence. The maximum sentence that the Appellate was liable to suffer for each count was 14 years. The sentence imposed was slightly more than a third of the maximum. This cannot be said to be harsh even in the face of the Appellants plea on mitigation. In holding that the sentence is deserved I note that the Appellant broke into and stole from two separate houses. Although it could be argued that it was one criminal transaction, it nevertheless has the effect of aggravating the circumstances.

8) The Appeal lacks merit and is hereby dismissed.

**DATED, DELIVERED AND SIGNED AT BUSIA THIS 29<sup>TH</sup> DAY OF MAY, 2013**

**IN THE PRESENCE OF:**

**KADENYI .....COURT CLERK**

**.....FOR STATE**

**F. TUIYOTT**

**J U D G E**