

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

HIGH COURT CRIMINAL APPEAL NO.115 OF 2012.

BARNABAS AMONDIAPPELLANT

VERSUS

REPUBLIC OF KENYA.....RESPONDENT.

**(BEING AN APPEAL ON CONVICTION AND SENTENCE FROM ORIGINAL CRIMINALCASE
NO. 2172 OF 2012. IN BUSIA LAW COURT.)**

J U D G M E N T.

The Appellant was arraigned before the trial court on 10th December, 2012 for the offence breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code in that on the night of 24th November, 2012 at Sigome, Sikoma sub-location jointly with others not before the court, broke and entered into a building, namely store of Francis Makokha and did steal from therein one wheelbarrow, 2 bags of cement and one bag of 50kg of lime, all valued Kshs.6,000/= the property of the said Francis Makokha. The Appellant pleaded guilty, and admitted the facts as true.

A close look of the proceedings, do not show whether the prosecution presented before the trial court any previous record of the Appellant. The Appellant made his mitigation asking the court to be lenient. The learned trial Magistrate, after considering the mitigation observed that the offence was serious and deserved a deterrent sentence. He proceeded to sentence the Appellant to three years imprisonment.

The Appellant not being satisfied with the sentence, filed his appeal on 9th December, 2012. The appeal is based on the following three grounds.

1. That he pleaded guilty to the charge.
2. That he is a 1st offender.
3. That he is the sole bread winner of his young family.

During the hearing of the appeal, the Appellant informed the court that his wife and child left him after he was arrested and convicted in this case. He asked the court to reduce the sentence to either one or two years imprisonment. The appeal was opposed by the state who submitted that the offence the Appellant was convicted on, carries a maximum jail sentence of seven years and the three years was therefore not harsh.

I have considered the grounds of appeal and the submissions by the state and considering the value of the property stolen being only Kshs. 6000/= and the fact that the Appellant is a first offender, I am of the view a sentence of three (3) years imprisonment is not only on the higher side but harsh. I therefore under section 354 (3) (a) (i) of the Criminal Procedure Code reduce the three year imprisonment sentence to (1) year imprisonment.

It so ordered.

S.M KIBUNJA

JUDGE

Delivered and dated this...17TH...day of OCTOBE, 2013

In the presence of:

JUDGE.