



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO 66 OF 2013

APPEAL FROM THE CONVICTION AND SENTENCE BY ACTING PRINCIPAL

MAGISTRATE AT MWINGI (H.M. NYAMBERI) IN CRIMINAL CASE NO 232 OF 2013

CHARLES KWOKO KIVANDO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

Charles Kwoko Kivando, hereinafter the appellant, was sentenced to four years imprisonment by the Acting Principal Magistrate at Mwingi on 23rd May 2013. He pleaded guilty to the charge of breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code. It is alleged that on 8th May 2013 at Thokoa sub-location, Migwani District in Kitui County jointly with another not before the court broke and entered the store of Joyce Mutuo Mwendwa and committed a felony therein namely stealing of 100 kilogrammes of beans.

The proceedings are brief. On 13th May 2013 the appellant was arraigned in court and charge and its particulars were read to him. He responded: **“It is true”**. The trial court entered a plea of guilty. The facts of the case were read after which the appellant stated: **“All the facts are correct.”**

After the conviction the trial court referred the appellant to a Probation Officer for a report. On 23rd May 2013 the probation report was tabled in court. It was negative and the trial magistrate was left with the task of dealing with the appellant as he deemed fit. The trial magistrate sentenced the appellant to four years.

The appellant has now invoked the appellate jurisdiction of this court challenging the conviction and sentence. He has advanced two grounds of appeal. The third ground is a plea to be present during the hearing of his appeal. The two grounds are:

- i. The learned trial magistrate gave a great and unsatisfactory sentence without considering that I am a first offender and I know nothing concerning cases (sic).
- ii. Since I was not charged any more I had been threatened by the complainer plus the officers who had charged me that if I deny the charges I will be beaten hence leading to agreeing the charges which I had never done (sic!).

The grammar is poor and the meaning unclear. To my understanding the appellant is saying that being the first he was appearing in court, he was not conversant with the court procedure and that he admitted the

charges because he had been threatened by the police and the complainant.

The learned State Counsel opposed the appeal submitting that the sentence is legal and ought to be upheld.

Section 348 of the Criminal Procedure Code provides as follows:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

Section 306 (a) of the Penal Code under which the appellant was charged attracts a penalty of seven years. Why is the appellant challenging the conviction and sentence when he pleaded guilty to the charge and confirmed the facts presented in court? His reasons are found in the grounds of appeal. Simply put, he is saying he was not familiar with court procedure and that he had been threatened by the police and complainant. This has nothing to do with the extent or legality of the sentence.

I have considered the short proceedings of the trial court and I find that the plea was taken in the language that the appellant understood. It was first read to him in Kiswahili and later in Kikamba language. The facts show that he broke into a store belonging to Ruth Mutuo Mwendwa and stole 100 kilogrammes of beans. The beans were traced to a motor cycle operator who explained that he had been hired by the appellant to ferry the beans to the market to sell the same. These facts were admitted by the appellant. The sentence is four years. It is a legal sentence.

I have considered this appeal and find no merit in it. The plea was unequivocal and the sentence is legal. This appeal is hereby dismissed for lack of merit. The conviction and the sentence are upheld.

Dated, signed and delivered this 9th day of December 2013.

S.N. MUTUKU

JUDGE