



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

Criminal Appeal 100 of 2010

EZEKIEL MUSYOKI MUTISYA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentence of the Senior Resident Magistrate

A.W. Mwangi delivered on 21/1/2010 in Kithimani Criminal Case No. 47 of 2010)

J U D G M E N T

The appellant was charged with two counts of burglary and stealing contrary to section 304(1) (a) and section 279(b) of the Penal Code. In the alternative, he was charged with handling stolen goods contrary to section 382(1) of the Penal Code. He was recorded as having pleaded guilty to counts 1 and 2 each of which was for burglary and stealing. He was convicted of the same. On 21st January 2010, he was sentenced to serve 3 years imprisonment on the 1st limb, and 4 months imprisonment on the 2nd limb for each of the two counts. The sentences were to run concurrently.

He has now appealed to this court against both conviction and sentence. His grounds of appeal are that he was given the alleged stolen items by his sister in law (one of the complainants). He claimed that he pleaded guilty to the charges in order to cover up a love affair, which he has had with his sister in law. He stated that he is 23 years old, and that the court should consider the circumstances of his case and reduce his sentence.

At the hearing of the appeal, the appellant relied on his grounds of appeal. He stated that he was sentenced to serve a total of 6 years, 8 months imprisonment.

Learned State Counsel, Mr Mukofu, supported the conviction and sentence. Counsel clarified that the sentences were to run concurrently. Therefore the total sentence was 3 years 4 months imprisonment.

This is a first appeal. I am required to review the record and come to my own conclusions.

I have perused the record of the subordinate court. The charges were read to the accused in Kiswahili. He was recorded as having answered “**it is true**” on each of the two main counts. The facts were thereafter given. The appellant accepted the facts as correct.

In my view, the plea was properly taken. The language used was Kiswahili. The facts as given disclose both offences. The facts disclose breaking and theft of items. In my view, the accused's story of having had a love affair with the complainant in count 1, is an afterthought. He is finding ways to get sympathy. I dismiss the appeal against conviction.

On sentence, though the appellant claims that the total sentence was 6 years, 8 months imprisonment, I agree with the learned State Counsel that the sentences on both counts having been ordered to run concurrently, he is to serve only a total sentence of 3 years and 4 months imprisonment. The concurrent sentence is neither harsh, illegal or excessive. I will uphold the same.

In the result, I dismiss the appeal both against conviction and sentence. I confirm that the total concurrent sentence is 3 years 4 months imprisonment.

It is so ordered.

Dated and delivered at Machakos this **11th** day of **June** 2012.

George Dulu

Judge

In presence of:-

Applicant in person

N/A for State

Mueni – Court clerk.`