



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

Criminal Appeal 238 of 2010

EMMA KERUBO OMARI APPELLANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGMENT

(Being an appeal from the conviction and sentence of the Senior Resident Magistrate's Court at Keroka, Hon. J. Were in Criminal Case No. 1233 of 2010 dated 17th March, 2009)

The appellant, **Emma Kerubo Omari** was charged alongside one **Simon Kefa Okenya** with the offence of burglary contrary to Section 304 (2) and stealing contrary to Section 279 (b) of the **Penal Code**. They also faced an alternative charge of handling stolen goods contrary to section 322 (1) of the **Penal Code**.

The appellant was the second accused in the trial court. She pleaded guilty to the charges and was sentenced to a fine of kshs. 15,000 and in default to serve 3½ years imprisonment for the offence of burglary and to a fine of kshs. 15,000 and in default to serve 18 months imprisonment for the offence of stealing. The court did not indicate that the sentences were to run concurrently.

The appellant has appealed against sentence. She has stated in her petition of appeal filed on 15th November, 2010 that the sentence was too harsh and excessive.

When the appeal came before me on 8th February 2012, the appellant departed from her petition and made submissions to the effect that she was wrongly convicted. On the issue of sentence she submitted that she understood the sentences were to run concurrently but the prison authorities had indicated to her that it was not so indicated on the warrant.

I have perused the record and considered the submissions by the respective parties. In her petition, the appellant has appealed against sentence only. I will therefore consider that ground alone.

The sentences imposed by the trial court have already been stated above. From the record, the accused was fined a total of kshs. 30,000/= and in default to serve 3 ½ years for count 1 and 1 ½ years for count 2. The record does not indicate whether the sentences were to run concurrently or consecutively. That was an omission on the part of the court. The practice in sentencing is to indicate specifically whether the sentences shall run concurrently or consecutively. I therefore correct the omission and order that the sentences be deemed to run concurrently. I have also considered that the

appellant has to date served a substantial part of the sentence.

Consequently, and for the above reasons, I reduce the sentence to the period already served. In the result, the appellant is set at liberty forthwith unless otherwise lawfully held.

Judgment dated, signed and delivered at Kisii this 25th day of September, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

Emma Kerubo Omari: appellant (present/absent)

..... counsel for respondent (present/absent)

..... court clerk

R. LAGAT-KORIR
JUDGE