

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 720 of 2010

JOSEPH MUTUA MUGWEAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original conviction & sentence in criminal case Number 772 of 2010 in the Senior Principal Magistrate's Court at Limuru - Mrs. M. A. Murage (SPM) on 16/12/ 2010)

JUDGEMENT

1. The appellant, **Joseph Mutua Mugwe** was tried and convicted for the offence of store breaking and committing a felony contrary to **Section 306(a)** of the **Penal Code**. The particulars of the charge were that on 16th May, 2010 at Red-Hill village he entered the store of John Kahindi Mukuria and stole several items valued at Kshs.278,200/=.
2. In the alternative he had been charged with handling stolen property contrary to **Section 322(2)** of the **Penal Code**. He was sentenced to serve 4 years imprisonment on 16th December 2010. On 30th December 2010 he filed an appeal in which he advanced six grounds. On the date of the hearing of the appeal however, he opted not to contest the conviction and threw himself at the mercy of the court, offering mitigation with a view to have his sentence reduced.
3. To advance his plea for mercy, the appellant submitted in mitigation that he has already served two years in prison, and pleads with the court to release him for the few remaining days. That he was a first offender and had learnt a lesson for the two years he has so far served in prison. That the sentence was harsh and excessive, in light of his mitigation and that he was the sole bread winner for his family.
4. The learned state counsel Miss. Kuruga submitted that considering that the stolen goods were not recovered, the sentence was lenient and the applicant should be left to serve it out.
5. From an analysis of the evidence on the record, I find that the appellant was properly convicted on the charge which faced him. The sentence which was imposed by the learned trial magistrate was lawful by virtue of; **Section 306(a)** of the **Penal Code** which provides that:
“Any person who breaks and enters a schoolhouse, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop, or any building belonging to a public body, or any building or part of a building licensed for the sale of intoxicating liquor, or a building which is adjacent to a dwelling-house and occupied with it but is not part of it, or any building used as a place of worship, and commits a felony therein; is guilty of a felony and is liable to imprisonment for seven years”.
6. An appellate court will not ordinarily interfere with the sentence imposed by the trial court unless it is found to be illegal or manifestly excessive, in the circumstances of the particular case. The sentence imposed in this case was four years imprisonment.
7. The sentence was neither illegal, and the appellant has not advanced this ground either, nor can it be said to be manifestly harsh or excessive, in view of the value of the goods he stole, and in the circumstances of this case. The sentence merely reflects the gravity of the offence for which the applicant

was convicted, and was not inappropriate in any way.

8. For the foregoing reasons, I decline to interfere by way of revision, as prayed with the sentences as imposed by the learned trial magistrate.

The application is hereby dismissed.

SIGNED DATED and **DELIVERED** in open court this **6th** day of **December 2012**.

L. A. ACHODE

JUDGE