



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 151 OF 2009

(From Original Conviction and Sentence in Criminal Case No. 203 of 2009 of the Resident Magistrate's Court at Kaloleni: S.R. Wewa - R..M.)

MICHAEL NJOROGE APPELLANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGEMENT

This is the appeal of **MICHAEL NJOROGE** against his conviction and sentence by the learned Resident Magistrate sitting at Kaloleni Law Courts. The Appellant was arraigned before the subordinate court on 6th August 2009 charged with the offence of **CHURCH BREAKING AND STEALING CONTRARY TO SECTION 306(a) OF THE PENAL CODE**. In addition the Appellant faced an alternative charge of **HANDLING STOLEN PROPERTY CONTRARY TO SECTION 322(2) OF THE PENAL CODE**. The charges were duly read out to the Appellant who entered a plea of '*not guilty*' to the main charge. However in response to the alternative charge the Appellant said:

"It is true"

thereby admitting the charge. The record indicates that the proceedings were conducted in Kiswahili which judging by his responses the Appellant well understood. Indeed the record indicates that the Appellant made his responses in Kiswahili.

After his plea of guilty the prosecutor proceeded to read out the facts to the Appellant as required by law. The Appellant responded by saying:

"The facts are correct"

thereby maintaining his plea of guilty. The learned trial magistrate then convicted the Appellant and after listening to his mitigation sentenced the Appellant to serve seven (7) years imprisonment. I am satisfied that the plea of the Appellant was properly recorded and his plea of guilty was clear and unequivocal. I find no reason to fault his conviction and I do hereby uphold the same.

I have perused the written submissions filed by the Appellant. He does not oppose his conviction but

pleads that a more lenient sentence ought to have been imposed. I am inclined to agree with the Appellant. The prosecutor confirmed him to have been a first offender. The Appellant pleaded guilty to the charge thereby saving the court from an unnecessary trial. In these circumstances the trial magistrate ought to have considered a more lenient and/or alternative sentence. The 7 year term though lawful was in my view excessive. As such I do set aside this 7 year sentence and substitute the same with a fine of Kshs.20,000/- in default three (3) years imprisonment to run from date of first conviction.

Dated and Delivered in Mombasa this 9th day of March 2011.

M. ODERO
JUDGE

in the presence of:
Appellant in person
Mr. Muteti for State