



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO. 325 OF 2009

(From original conviction and sentence in Criminal Case No. 6468 of 2009 in the Chief Magistrate's Court at Nakuru – B. KITUYI, RM)

CYRUS MWANGI NDUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant herein is Cyrus Mwangi Ndungu. He was charged jointly with 2 others before Mrs. Juma, Chief Magistrate, with the offence of breaking into a building and committing a felony contrary to section 306(a) of the Penal Code. It was alleged that on 8/11/2009 at Lake Nakuru National Park, they broke and entered into a building, a guest house of World Wide Fund Organization and stole the things listed in the charge sheet.

When they were arraigned before the court on 17/11/2009, the Appellant, then 2nd Accused, pleaded guilty to the charge and was sentenced to 4 years imprisonment. The case proceeded to hearing in respect of the other Accused persons. Although in his petition of appeal the appellant was seeking to have the conviction quashed, in his submissions in court, he only pleads that the court do forgive him because he has changed and that the court be lenient to him.

Mr. Omari, learned counsel for the State urged the court not to interfere with the sentence because it is lenient.

The prosecution did not have any previous criminal records in respect of the Appellant. In sentencing him, the court acknowledged the fact that the Appellant was treated as a first offender but that most of the stolen goods were not recovered and preferred a deterrent sentence of 4 years imprisonment. **Section 306(a) of the Penal Code** provides for a maximum sentence of 7 years. So far, the Appellant has served 2 years imprisonment. In exercise of its discretion, this court hereby orders that a Probation Officer do investigate the suitability of the Appellant being placed on C.S.O. for the balance of the sentence. A report be made by the Probation Officer and the case be mentioned for further orders.

It is so ordered.

DATED and **DELIVERED** this 26th day of October, 2011.

R. P. V. WENDOH
JUDGE

PRESENT:

Appellant in person present

Mr. Omari for State

Court Clerk - Kennedy