



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 310 & 306 of 2007

SAMUEL MAINA WAMBUI1ST APPELLANT

Versus

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO.306 OF 2007

(Arising from Nanyuki S.P.M.'s Criminal Case No. 1382 of 2007)

JOSPHAT MAINA GATURI2ND APPELLANT

Versus

REPUBLIC.....RESPONDENT

JUDGMENT

Samuel Maina Wambui, and Josphat Maina Gaturi, 1st and 2nd the appellants herein, jointly with three others were tried on a charge of burglary contrary to S. 304(2) and Stealing Contrary to S. 279(b) of the Penal code. They also faced an alternative count of handling stolen property contrary to Section 322 of the Penal Code. The appellants and their co-accused initially pleaded not guilty to the charges. The appellants changed their plea and pleaded guilty to the main charge. When they appeared before Miss Ndung'u learned Principal Magistrate on 17th September 2007. The appellants were convicted and sentenced to serve 5 years imprisonment on each limb of the charge.

The appellants each filed an appeal before this court (now consolidated) against the sentences. It is the submission of the appellants the sentence meted out is harsh and excessive. The appellants have alleged that the trial magistrate did not consider the mitigating factors. Miss Ngalyuka, learned State Counsel did not oppose the appeals.

I have considered both the written and oral submissions plus the material placed before me. It is trite law that an appellate court cannot interfere with a trial court's discretion on sentence unless it is shown that the trial court did not consider material factors or that it took into account irrelevant factors or that the sentence is manifestly excessive. I have perused section 304 (2) and 279(b) of the Penal Code. A conviction under the aforesaid sections attracts maximum sentences of 10 and 14 years imprisonment respectively. The record shows that the learned Principal Magistrate gave the accused persons a chance to mitigate. After receiving the appellants' submissions on mitigation, the learned Magistrate called for the probation officer's report. The report indicated that the appellants were of bad conduct. The trial court took into account those sentiments. She was entitled to do so. I find that the learned Principal Magistrate did not breach any of the principles applicable in sentencing. Hence I do not see any reason that warrants any interference of the order on sentence. The sentence is neither harsh nor excessive. The appeals are hereby ordered dismissed in their entirety.

Dated and delivered this 13th day of January 2010.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Makura and the appellants.

J.K. SERGON
JUDGE