



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
Criminal Appeal 85 of 2009

PETER ASTIVO MESHACK APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant Peter Astivo Meshack and two others appeared before the Resident Magistrate at Maseno charged with the offence of Burglary and stealing contrary to Section 304 (2) and Section 279 (b) of the Penal Code in that on the 12th May 2009 at 9:00 p.m. within Maseno Township Nyanza Province jointly with others not before court broke and entered the dwelling house of Welma Binsori with intent to steal and did steal from therein a suitcase, assorted clothings, blankets, two radios and kitchen shopping goods all valued at Kshs. 15,000/= the property of the said Welma Binsori.

There was an alternative charge of handling stolen property contrary to Section 322 (2) of the Penal Code in that on the 12th May 2009 at 9:00 p.m. within Maseno Township, jointly with others not before the court otherwise than in the course of stealing dishonestly retained one suitcase, two radios, assorted clothings, a blanket and kitchen shopping goods all valued at Kshs. 15,000/= knowing or having reason to believe them to be stolen property.

The appellant pleaded guilty to the main court and the following facts were narrated by the prosecution:-

“On 12th May 2009 at 2100hrs the complainant was in Kisii when he received a report that his house was broken into. Members of the public got a tip off and arrested the accused in the process of ferrying the goods including a suit case, 2 radios and kitchen shopping valued at Kshs. 15,000/=. The said items were all recovered and the 3 accused escorted to Maseno Police station and charged. I produce the bag with clothes, kitchen shopping as exhibits.”

After accepting the correctness of the facts, the appellant was convicted on his own plea of guilty. He was a first offender and prayed for leniency in mitigation. The learned trial magistrate imposed a sentence of five (5) years imprisonment for the first limb of the offence i.e. Burglary and two (2) years imprisonment for the second limb of the offence i.e. stealing. Both sentences were to run concurrently.

Being dissatisfied with the sentence, the appellant filed this appeal on the basis of the grounds contained in his petition of appeal filed herein on 4th June 2009. He appeared in person at the hearing of the appeal and presented written submissions.

The learned Senior State Counsel, Miss Oundo, appeared for the state and opposed the appeal contending that the sentence imposed by the learned Resident Magistrate was neither harsh nor excessive.

This court has carefully considered the appeal and the supporting grounds which are essentially a plea to the court to exercise leniency and reduce the sentence imposed by the trial court.

An appellate court may interfere with a decision on sentence only if the trial court has acted on wrong principles or has imposed a sentence which is manifestly inadequate or manifestly excessive or harsh (See, Diego =vs= Republic [1985] KLR 621).

The offence of burglary under Section 304 (2) of the penal code carries a maximum sentence of ten (10) years imprisonment while the offence of stealing under Section 279 (b) of the penal code carries a maximum sentence of fourteen (14) years imprisonment.

Consequently, the sentence imposed herein by the learned trial magistrate was proper and lawful. It was neither inadequate nor excessive and harsh.

This court does not therefore find any reason to interfere with the sentence.

The appeal lacks merit and is hereby dismissed.

Dated, signed and delivered at Kisumu this 15th day of March 2010.

J. R. KARANJA

JUDGE

JRK/aao