



REPUBLIC OF KENYA

HIGH COURT AT MOMBASA

CRIMINAL APPEAL 208 OF 2006

RAMADHAN KARISA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant herein **RAMADHAN KARISA**, has filed this appeal against the conviction and sentence imposed upon him by **HON. W.F. ANDAYI**, learned Senior Resident Magistrate sitting at Kaloleni Law Courts. The Appellant had been arraigned in court on 21st July 2008 and was charged with the offence of **SHOP BREAKING AND COMMITTING A FELONY CONTRARY TO SECTION 306 OF THE PENAL CODE**. The particulars of the offence read that

“On the 19th day of July 2008 at 8.00 p.m. at Viragoni Village, Mwana Mwinga Location, Kaloleni district within Coast Province, jointly broke into the kiosk of DAVID KAHINDI and committed a felony namely theft and did steal shop goods worth Kshs.7,783/- the property of DAVID KAHINDI”

The charge was read out to the Appellant and he entered a plea of guilty by saying

“Its true”

As required by S. 207 of the Criminal Procedure Code, the prosecutor **INSPECTOR NGOMO**, did read out the facts of the charge to the Appellant. He maintained his plea of guilty by saying

“Facts are correct”

The trial magistrate proceeded to convict the Appellant on his own plea of guilty and after listening to his mitigation sentenced him to serve four (4) years imprisonment on each limb of the offence and the sentences were ordered to run concurrently. It is against this conviction and sentence that the Appellant now appeals.

The Appellant who appeared in person at the hearing of his appeal chose to rely entirely on his written submissions which had duly been filed in court. **MR. ONSERIO** the learned State Counsel who appeared for the Respondent State opposed the appeal.

I have perused the written submissions filed by the Appellant and I note that he raises the ground that the proceedings were conducted in the English language which he did not understand. This I find to be an outright lie and can only be an attempt to mislead the court. The record on page 1 clearly indicates that the learned trial magistrate did enquire from the Appellant which language he wished to proceed in. The Appellant clearly responded

“I use Swahili”

I have no doubt that the Appellant clearly understood the charge and facts as read out to him as evidenced by his clear and cogent responses thereto. I find further that the trial magistrate took the precaution of warning the Appellant in the following words, before taking plea

“Before taking plea from the accused persons, they have been clearly informed of each and every element of each of the charges and also notified that the penalty for these offences is severe. Each has responded by saying they have understood and plead as recorded above”

I therefore reject the Appellant's contention that he did not understand the proceedings. I am satisfied that the Appellant's plea of guilty was properly recorded in accordance with the law. The conviction was sound and I do uphold the same.

The Appellant appeals against his sentence saying it was harsh and excessive. In view of the value of the stolen goods and in view of the fact that the Appellant pleaded guilty to the charge thereby saving the court from unnecessary trial, I do feel that the trial magistrate ought to have considered alternative sentences like fine, community service etc. In view of the fact that the Appellant in mitigation claimed to be a student in class 8 the trial magistrate ought to have considered a probation order. I do find that the eight (8) year sentence imposed was in the circumstances unduly harsh. The Appellant was sentenced in July 2007 thus he has served roughly two (2) years behind bars. I have no doubt that he has learnt his lesson. I do hereby reduce his sentence to time served. This appeal against sentence therefore succeeds. The Appellant to be set at liberty forthwith unless he is otherwise lawfully detained.

Dated and Delivered at Mombasa this 26th day of May 2010.

M. ODERO
JUDGE

Read in open court in the presence of:-

Mr. Onserio for State

Appellant in person

M. ODERO
JUDGE
26/05/2010