

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Appeal 92 of 2008

*(Appeal against both conviction and sentence of the Chief Magistrate's Court at Kakamega
in Criminal Case No. 1736 of 2008 [P. N. AARERI ESQ., RM])*

HANNINGTON SHITOTE ----- APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGEMENT

1. HANNINGTON SHITOTE, the Appellant herein was charged in Kakamega CM's court Criminal Case Number 1736/2008 with the offence of house breaking contrary to S.304(1) of the Penal Code and the offence of stealing contrary to S. 279(h) of the Penal Code. It was alleged that on 17.10.2008, at Shiveye village, Kakamega South District, he broke and entered a dwelling house belonging to Mary Ameyo and stole three cocks, one hen, one t-shirt and one trouser. He admitted the offences and he was sentenced to serve seven (7) years in prison
2. At the hearing of the appeal, he only sought leniency on sentence and it should be noted that for this court to interfere with sentence the following matters must be taken into account;
 - i. whether the trial court ignored a known legal principle;
 - ii. whether the trial court took into account an irrelevant matter in sentencing;
 - iii. whether the trial court failed to take into account a relevant factor;
 - iv. whether the sentence is manifestly harsh and excessive in the circumstances of the case. (see generally R vs Jagani & Ano. [2001] KLR 590
3. In the instant case, there is no doubt, that the sentence is excessive. What aggravates an offence under S.279 (h) of the Penal Code is the threat of violence while the theft is taking place. In this case, there was no threat of violence as the Appellant while stealing, had no contact with the complainant, Mary Ameyo. He was only arrested a few days after the incident while wearing the stolen T-shirt and trouser.
4. In any event, noting that the Appellant readily admitted the offence and the value of the stolen items was Kshs.5,700/=, a seven (7) year sentence is most obviously harsh...
5. In the event, I will concede to the Appellant's request and plea and order that his Appeal be allowed to the extent that his sentence is now reduced to the one already served and he may be released from custody unless he is otherwise lawfully held.
6. Orders accordingly.

Delivered, dated and signed at Kakamega this 15th day of June, 2010

ISAAC LENAOLA

J U D G E