



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

CRIMINAL APPEAL 37 OF 2007

BETTY WANZA NDUKUAPPELLANT

- AND -

REPUBLICRESPONDENT

(An appeal from sentence imposed by District Magistrate Mr. *Kassan* on 18th January, 2007 in Criminal Case No. 6623 of 2006 at Makadara Law Courts)

JUDGEMENT

The appellant was charged with house-breaking contrary to s. 304 (1) and stealing contrary to s. 279 (b) of the Penal Code (Cap. 63, Laws of Kenya). The particulars were that the appellant, on 30th November, 2006 at Mukuru-kwa-Njenga in Embakasi, Nairobi, jointly with another not before the Court, broke and entered the dwelling house of ***Justus Mutisya Mutua***, with intent to steal therein, and did steal one television, JVC by make, one Pioneer speaker, and one Panasonic radio the property of ***Justus Mutisya Mutua*** – all valued at Kshs.23,000/=.

Plea was first taken on 5th December, 2006, on which occasion the appellant denied the offence charged. But on 18th January, 2007 she changed her plea, and pleaded guilty, whereupon the facts of the case carried in the charge were read out to the appellant in Kiswahili.

The complainant who was away from home, was called and informed that somebody was in his house. When he rushed and got to his house, he found the appellant herein stuffing his effects into containers – one television, a speaker and a radio – all valued at Kshs.23,000/=. Another person who was in the company of the appellant escaped; but the appellant was arrested. The appellant’s response to the statement of facts was: “All facts are true and correct”.

The appellant was convicted on her own plea of guilty. For the offence of house-breaking, the appellant was sentenced to three years’ imprisonment; and for stealing, she was sentenced to two years’ imprisonment.

The substantive grounds of appeal raised by the appellant are as follows: she is a single parent and the sole bread-winner for her one child; the five-year sentence imposed on her was “too heavy”; a non-custodial sentence was more appropriate.

In her oral submissions the appellant urged that she was a first offender; she had pleaded guilty; the sentence was too severe; she is remorseful and will not commit a similar offence; she is in ill-health, with

asthma and HIV.

Learned counsel **Ms. Gateru** contested the appeal which was only against sentence; for the law provides for as much as seven years' imprisonment for house-breaking, and for as much as 14 years' imprisonment for stealing. Counsel urged that the sentence imposed was lawful and not harsh or excessive. Counsel submitted that the trial Court had taken into account the fact that the appellant had pleaded guilty, and not taken up the Court's time unnecessarily.

I have carefully considered the facts of this case, as well as the pertinent law on sentencing. On the merits of the case, it is not possible to question the dutifulness which moved the Court in imposing the sentence it did; and it is this Court's judicial obligation to sustain such a conscientious position taken by the trial Court.

I hereby dismiss the appeal; and affirm the sentence complained about.

Orders accordingly.

DATED and DELIVERED at Nairobi this 2nd day of February, 2009.

J. B. OJWANG

JUDGE

Coram: Ojwang J.

Court clerk: Huka

For the Respondent: Ms. Gateru

Appellant in person