



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CRIMINAL APPEAL 202 OF 2008

ESSAU MAINA CHEGEAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal form original Conviction and Sentence of the Senior Resident Magistrate's Court

at Karatina in Criminal Case No.251 of 2008 by D.A. ORINDA. – SRM)

J U D G M E N T

The appellant was convicted on his own plea of guilty for the offence of House Breaking contrary to *section 304 (1)* and Stealing contrary to *Section 279 (b)* of the Penal Code. Upon conviction he was sentenced to serve 3 years imprisonment in respect of the 1st limb and 6 years imprisonment in respect of the 2nd limb. The appellant was aggrieved by the sentence and hence preferred this appeal limited as it were to sentence only.

In his petition of appeal, the appellant states;

Ø “That I pleaded guilty to the charge.

Ø That my lordship, the imposed sentence is harsh and excessive for there was nothing lost by the complainant.

Ø That my lordship the imposed sentence by the trial court is harsh and excessive when the fact of good character is considered in respect of *section 56 Evidence Act Cap 80 Laws of Kenya.*

Ø That I too (sic) remorseful for the act with a promise to this honourable court I will maintain my character of a good citizen as before. I have also two children who have to suffer during my imprisonment.

Ø That my lordship, the imposed sentence is excessive if the same is meant for rehabilitation of (sic) punishment purposes for it will be extended rehabilitation or punishment.”

From the foregoing the appellant's alleged grounds of appeal are really pleas in mitigation.

When the appeal came up for hearing, the appellant expressed his remorse and his determination never to commit any offence in future. That he had in fact become saved whilst in prison custody.

The appeal on sentence was opposed by the state. **Mr. Makura**, learned senior state counsel submitted that the maximum sentence on the 1st limb was 7 years whereas the 2nd limb attracted a maximum sentence of 14 years. The sentences imposed herein were legal, neither harsh nor excessive. The discretion exercised by the trial court thus ought not to be interfered with therefor.

As stated by the court of appeal in the case of **Republic V Batista Ligoni Beni C.A. No.65 of 2004** (UR) sentencing is a matter for the discretion of the trial court. The discretion must however, be exercised judicially. The trial court must be guided by evidence and sound legal principles. It must take into account all relevant factors and exclude all extraneous and irrelevant factors.

Much as the appellant pleaded to the charge on his first arraignment in court; he was allowed to mitigate. The fact that he pleaded guilty as aforesaid was a factor that the learned Magistrate took into account before arriving at the appropriate sentence. The sentence imposed was certainly legal. It was neither harsh nor manifestly excessive. Indeed the learned magistrate even considered the fact that he was a first offender.

As stated earlier, sentencing is discretionary. I have to reconsider the facts and the circumstances of the case. This I have done. However when the circumstances are considered as aforesaid, I am of the view that the learned Magistrate did not grossly misdirect himself on the sentence he came to and did not err in principle. He took into account relevant considerations and thus arrived at a sentence that meets the ends of justice. I see no reason to interfere with that discretion exercised by the learned magistrate in sentencing the appellant.

Accordingly I find no merit at all in this appeal on sentence. It is dismissed.

Dated and delivered at Nyeri this 31st day of July, 2009.

M.S.A. MAKHANDIA

JUDGE