



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 61 of 2006**

(Appeal arising from KMLL CR. NO. 499 of 2006)

RAJABU KIPLIMO WANANDA.....APPELLANT

~VRS~

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant Rajab Kiplimo Wananda was convicted on his own plea of guilty of three counts by Kimilili Resident Magistrate Court on the 4th July, 2006. Counts I and II were offences of stealing contrary to section 275 of the Penal Code and was sentenced to serve two (2) years imprisonment on each count. In count III, the charge was of burglary and stealing contrary to sections 304 (2) and section 279 (b) of the Penal Code and was sentenced to two years imprisonment. The sentences were to run consecutively. The Appellant only appeals against sentence in his three grounds:

- 1) That the sentence of six years is excessive;**
- 2) That I am still schooling;**
- 3) That it is my first offence.**

He urges this court to reduce the sentence relying wholly on the said grounds.

The state opposed the appeal with Mr. Onderi, Senior Principal State Counsel submitting that the sentences of two years imprisonment for each count were not excessive. In count III, there are two limbs and accused was given a blanket sentence of two years. The court ought to have sentenced him on each limb. The first limb of burglary carries a maximum sentence of seven (7) years while stealing from a dwelling house carries fourteen (14) years maximum. It is the duty of this court to rectify such mistakes. I therefore sentence the accused to serve two years on each limb.

In count I and II, the offences were committed on the same date, that is the 2nd of July 2006 the same time being 11.30 p.m. In the third count the offences were committed on 3rd July 2006 at 1.30 a.m. Property stolen in count I and II was valued at Ksh.940/= and Ksh.450/= respectively. In count III, the value was Ksh.500/=. Although the accused was a first offender, the sentences imposed are within the law and not excessive in the circumstances. The only mistake the court made was to order that the sentences run consecutively. I hereby order that the sentences of two years imprisonment in all the counts run concurrently. The accused has fully served the said sentences since 4th July 2006 when he was sentenced. I hereby order that the Appellant be released forthwith unless otherwise lawfully held.

F. N. MUCHEMI
JUDGE

Dated, Delivered and Signed at Bungoma this 26th day of November, 2009 in the presence of the appellant and the state counsel Mr. Onderi.