

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 49 of 2007
JUSTIN SHIKUKUAPPELLANT

~VRS~

REPUBLIC.....RESPONDENT

JUDGMENT

The accused Justin Shikuku was convicted of eight counts of handling stolen goods contrary to section 322 (2) of the Penal Code and sentenced to two (2) years imprisonment to run consecutively. The accused was acquitted of seven (7) counts of breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code and one count of stealing contrary to section 275 of the Penal Code.

The accused appeals to this court only on grounds that the sentence was excessive and that he is sickly and suffering in prison. Further that the period he stayed in remand before sentence was not considered by the trial court.

The state opposed the appeal on grounds that the sentence of two years to run consecutively was reasonable in the circumstances. The Appellant was the watchman of Kimilili Boys High School. He owed a duty to the school to prevent stealing or wasting of the students property. In breach of that duty, the appellant stole from the school and the students. He refused to plead guilty and subjected the court to a vigorous trial.

I agree with the state that the appellant breached the trust bestowed upon him to guard the school's property. The sentence was not excessive in the circumstances. The main offences for which the appellant was acquitted were committed on different dates although joined in one file. The alternative charges were all committed on the same date hence 10th August 2006. this is the date that the accused was arrested and found in possession of a host of items belonging to the school in the alternative charges to count 1 and others to seven (7) students in the alternative charges to counts II to VIII respectively.

For this reason, the court ought to have ordered that the sentences run concurrently. The appeal therefore succeeds. I therefore order that the two year sentences on each alternative count to run concurrently. The accused has served the sentence fully with an extension of a few months. I hereby order that he be set at liberty unless otherwise lawfully held.

F. N. MUCHEMI
JUDGE

Dated, Delivered and Signed at Bungoma

This 24th day of November, 2009 in the presence of the accused and the state counsel.