



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appeal 510 of 2006**

**IBRAHIM MOHAMED ..... APPELLANT**

**-AND-**

**REPUBLIC ..... RESPONDENT**

*(An appeal from sentence imposed by Senior Resident Magistrate R.K. Mibei on 2<sup>nd</sup> May, 2006 in Criminal Case No. 131 of 2006 at Mander Law Courts)*

**JUDGMENT**

The appellant was charged with the offence of store-breaking and stealing, contrary to Sections 306(a) and 279(g) of the Penal Code (Cap. 63, Laws of Kenya). The particulars were that the appellant, on 28<sup>th</sup> April, 2006 at 1.00 p.m., at BP I Location in Mander District, within North Eastern Province, broke into and entered a store, the property of the Arid Land Ministry, with intent to steal, and did steal 12 hoes valued at Kshs.2,400/=, the property of the said Ministry.

After the charge was read out and explained to the appellant herein in a language that he understands, he pleaded guilty. The facts of the offence were then read out by the prosecutor, which the appellant admitted to be true.

The appellant had on the material date, been within the Arid Lands and Resource Management compound. Then at 1.00 p.m. he broke into a store which contained hoes and other farm implements. He stole a carton containing 12 hoes, and as he was coming out he was sighted by the financial controller, one **Absalom**. When **Absalom** asked him where he got the hoes from, the appellant said he had stolen them from the store; whereupon the police were alerted, and Police officers came to conduct investigations. The hoes had a total value of Kshs.2,400/=.

The learned Magistrate then convicted the appellant who, in mitigation, asked for forgiveness. After the prosecutor informed the Court there was no record on the appellant's antecedents, the learned Magistrate took note of the prevalence in Moyale of cases of office-breaking and house-breaking, and remarked that a deterrent sentence was necessary. He sentenced the appellant to 12 years' imprisonment under S. 279(7) of the Penal Code.

On appeal, the appellant stated that the sentence imposed was too harsh for a first offender. He contended that the trial Court had not complied with S. 169(1) of the Criminal Procedure Code (Cap. 75), which requires judicial decisions to be reasoned.

Learned State Counsel **Mrs. Kagiri** contested the appeal, noting that the appellant had himself pleaded guilty to the charge, and had admitted the facts constituting the particulars of the charge.

On sentence, counsel urged that, as there was no record indicating any previous convictions, the appellant qualified to be treated as a first offender; and on that basis, the sentence imposed, of 12 years in jail, was harsh. **Mrs. Kagiri** submitted that this Court could interfere with the sentence, by imposing a more appropriate sentence befitting the case of a first offender.

By s. 279 of the Penal Code (Cap.63) the maximum sentence provided for, in respect of an offence such as was stated in the charge herein, was 14 years' imprisonment. I would consider that a jail term of 12 years in the case of a first offender would in the circumstances have been harsh and oppressive. This is a matter to which I have in the past devoted attention and, in **Yussuf Dahar Arog v. Republic**, High Court Criminal Appeal No. 110 of 2006 I had attempted to formulate guiding principles, in the following terms:

***“Such is, of course, a maximum sentence and, within that constraint, the Court has a wide discretion which it exercises on judicial principles. Such principles would, I believe, take into account the ordinary span of life of a human being; the general circumstances surrounding the commission of the offence; the possibility that the culprit may reform and become a law-abiding member of the community; the goals of peace and mutual tolerance and accommodation among people – those who are injured, and those who have occasioned injury”.***

The foregoing principles, taken together with the fact that the appellant was a first offender, dictate that a more lenient sentence be imposed; and I now allow the appellant's appeal on sentence, and reduce his term of imprisonment to **four** years, with effect from the date of the original judgment.

**Orders accordingly.**

**DATED and DELIVERED** at Nairobi this 18<sup>th</sup> day of February, 2008.

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Huka**

**For the Respondent: Mrs. Kagiri**

**Appellant in person**