REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

(CORAM: OJWANG, J.)

CRIMINAL APPEAL NO. 319 OF 2007

-BETWEEN-

PETER MAINA MUCHOKI…….....…….....APPELLANT

-AND-

REPUBLIC…….……..…….…….…....RESPONDENT

(An appeal from the sentence imposed by Senior Resident Magistrate L.W. Gicheha on 8th May, 2007 in Criminal Case No. 2290 of 2007 at Thika Law Courts)

JUDGEMENT

The appellant was charged with burglary and stealing contrary to s.304(2) as read with s.279(b) of the Penal Code (Cap.63, Laws of Kenya).

The particulars were that the appellant, on the night of 25th – 26th July, 2006 at Kabati Township in Maragua District of Central Province, broke and entered the dwelling house of ***Mary Muthoni Ngugi,*** and stole one mattress, ten cushions, one stove, and three dresses – all valued at Kshs.10,000/=.

The appellant faced the alternative charge of handling stolen property contrary to section 322(2) of the Penal Code; and the particulars were that, on 27th July, 2006 at Riandegwa Village in Maragwa District aforesaid, the appellant, otherwise than in the course of stealing, dishonestly received or retained ten cushions, one mattress, and one stove, having reason to believe them to be stolen goods.

On 8th May, 2007, the substance of the charge and every element thereof was stated by the Court to the accused who, upon being asked if he admitted or denied the truth of every element of the charge, replied: "it is true". Thereupon, a plea of guilty was entered; and the prosecutor then read out the facts of the case.

On 25th July, 2006 at 4.00 p.m., the complainant securely locked her door at Kabati Market, and went to her place of work, at Thika. She stayed in Thika the whole night. When the complainant returned home the following day, she found that her house had been broken into, and one mattress, ten cushions, one stove, and three dresses had been stolen. She later learned from the Police that some of the stolen items had been recovered; and she visited the Police station and identified one mattress, ten cushions and a stove. These items, the complainant learned, had been recovered from the appellant herein. After

investigations were completed, a charge was laid against the appellant.

After the appellant admitted the foregoing statement as a true account of the pertinent facts, he was found guilty, and duly convicted.

The learned Magistrate took into account the fact that the appellant was not a first offender: on 8th May 2007 he had been convicted in Criminal Case No. 2289 of 2007, for the offence of burglary and stealing, contrary to s.304 of the Penal Code; and he had been sentenced to 18 months' imprisonment. On that basis, the learned Magistrate sentenced the appellant to a three-year term of imprisonment.

The appellant's grounds of appeal were as follows:

(i) that he is a first offender;

(ii) that he is the sole bread-winner for his family;

(iii) that his mitigation statement had been ignored by the Court of first instance;

(iv) that the prosecution had failed to prove the case against him;

(v) that no exhibits were brought before the Court;

(vi) that the sentence passed was harsh and excessive.

The appellant, who conducted his own appeal in the Kikuyu language, insisted that he was a first offender and thus, had had no prior experience in the conduct of a case. He said: "*I never knew that pleading guilty could have such serious consequences"*. He then said: "*I was pleading guilty because I thought I would [be left free], after [stolen] goods were recovered*".

Apart from claiming he had made tactical errors at the trial, the appellant pleaded ill-health; he said he was asthmatic, and prison conditions had aggravated this; he said: *"I get daily injections, but these have no effect due to prison conditions"*.

Learned respondent's counsel, ***Mr. Makura*** opposed the appeal which, as he rightly urged, could only, in law, be an appeal on *sentence*, and not on c*onviction*.

Counsel urged that the maximum sentence for burglary and stealing was seven years' imprisonment – and for the second limb of the stealing charge, from a building, the maximum penalty was 14 years' imprisonment. Counsel urged that the three-year prison term which had been imposed against the appellant, was a "very lenient" sentence – noting especially that the appellant had earlier been convicted of a similar offence. Counsel urged that the sentence be confirmed.

It is clear that the several grounds of appeal which, in effect, challenge the conviction imposed by the Court of first instance, are, with respect, misguided. Section 348 of the Criminal Procedure Code (Cap. 75, Laws of Kenya) provides that:

> ***"No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence***".

The reasons which the appellant states at this stage, for having pleaded guilty before the Magistrate's court, are, in my opinion, inherently questionable, and do no less than *confirm* the honest position that the crime was committed, and conviction was rightly recorded. The health grounds which the appellant has raised, bear no legal import, though this gives an opportunity for the Court to state that the prison has access to health-care facilities.

The appeal is dismissed, and conviction and sentence affirmed.

Orders accordingly.

DATED and DELIVERED at Nairobi this 15th day of October, 2008.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Huka

For the Respondent: Mr. Makura

Appellant in person