



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

Criminal Case 242 of 2006

ANN NJAMBI WANYOLO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From Original conviction and sentence in criminal case No. 997 of 2006 of the SP Magistrate's Court at Kiambu)

J U D G M E N T

ANN NJAMBI WANYOLO, the appellant was charged before the subordinate court with housebreaking and stealing contrary to section 304(1) and 279 (b) of the Penal Code. The particulars of the offence were that on the 20th of April 2006 at Kongo village in Kahawa West within Nairobi area, broke and entered the dwelling house of MARTHA WANJIRU MURIGE with intent to steal therein and did steal one bed sheet, two wall nets, five (5) combined plates, six (6) tea cups, one thermos flask, one hot pot, eleven (11) long trousers, sixteen (16) T-shirts, one pair of shoes and cash Kshs.160/= all valued at Kshs.6,910/= the property of MARTHA WANJIRU MURIGE. In the alternative, she was charged with handling stolen goods contrary to section 322(2) of the Penal Code. The particulars of the offence were that on 3rd May 2006 at Kahawa West within Nairobi Area, otherwise than in the course of stealing dishonestly received or retained one pair of shoes, 8 plates, two (2) cups, one hot pot, one Nakira radio, three ladies long trousers, three T-shirts and two door curtains knowing or having reason to believe them to be stolen items. When the main charge was read to her, she was recorded as having pleaded guilty. She was convicted on the main count and sentenced to serve 3 years imprisonment for house breaking and 3 years imprisonment for theft. The sentences were to run concurrently. The appellant, being aggrieved, has appealed to this court on sentence only.

When the appeal came up for hearing, the appellant submitted that she was asking for forgiveness.

Learned State Counsel, Mr. Makura opposed the appeal on sentence. Counsel contended that the concurrent sentences imposed were neither harsh nor excessive, as housebreaking carried a maximum sentence of 7 years, while theft from a dwelling house carried a maximum sentence of 14 years. Counsel contended that the learned magistrate exercised her discretion in sentencing properly.

In response to the State counsel's submissions, the appellant submitted that she was asking for forgiveness especially because she had learnt some useful things in prison which could assist her in life.

This is an appeal against sentence. Sentencing is essentially the discretion of the sentencing court. An

appellate court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor or that it failed to take into account a relevant factor, or that it applied a wrong principle or short of these the sentence is so harsh and excessive that an error of principle must be inferred – see **SHADRACK KUPROTICH KOGO –VS- REPUBLIC – Criminal Appeal No. 253 of 2003 Eldoret (CA).**

I have perused the proceedings herein. Some of the stolen items, that is, a pair of shoes, three plates, two cups, one hot pot, one Nakira radio, three ladies long trousers and three T-shirts were recovered and produced in court. Indeed, the maximum sentence for housebreaking under section 304(1) of the Penal Code is 7 years imprisonment, and the maximum sentence for an offence of theft from a dwelling house contrary to section 279(b) of the Penal Code is 14 years imprisonment. The appellant was a first offender.

The appellant stated in mitigation that she was orphaned and that she stole in order to help herself as the father of her child had deserted her. The magistrate considered the mitigating factors, and observed that the court sympathized with her, before passing sentence. The sentence is perfectly legal. However, the learned magistrate did not consider that the appellant pleaded guilty to the offence and thus did not waste the court's time. The court did not also consider that some of the stolen items were recovered. In my view, had the magistrate taken into account these relevant factors, she would have pronounced a more lenient sentence.

For these reasons, I consider that I am justified in interfering with the sentence imposed.

For the above reasons, I allow the appeal and set aside the concurrent sentences imposed by the subordinate court. I order that the appellant will serve two(2) years imprisonment on each limb of the offence from the date that she was sentenced by the subordinate court. The sentences will run concurrently.

Dated and delivered at Nairobi this 29th October, 2007.

GEORGE DULU

JUDGE

In the presence of –

Appellant in person

Mr. Makura for State

Eric – court clerk

