

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 207 of 2006

PAUL NARUMBE NAPARON..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**(From original conviction and sentence of the Principal Magistrate's Court at Nyahururu in
Criminal Case No.3024 of 2006 – M. T. Kariuki [R.M.]**

JUDGMENT

The appellant, Paul Narumbe Naparon was charged with the offence of **House breaking and stealing contrary to Section 304 (1) as read with Section 279(b)** of the **Penal Code**. The particulars of the offence were that on the 13th July 2006 at Thigio village in Laikipia District, the appellant broke and entered the dwelling house of Teresia Wairimu Mwangi with the intend to steal therefrom and did steal cash Ksh.221, table cloth and a wrist watch all valued at Ksh.521/=, the property of the said Teresia Wairimu Mwangi. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and sentenced to serve seven years imprisonment. The appellant was aggrieved by his sentence and has appealed to this court.

During the hearing of the appeal, the appellant reiterated the contents of his petition of appeal which was basically a plea for leniency by this court. The State left the issue of sentence to the court. The principles to be considered by this court in determining whether or not to interfere with the exercise of discretion by the trial magistrate when sentencing a convict are well settled. The Court of Appeal in **Samuel Githua Njoroge vs Republic CA Criminal Appeal No.53 of 2006 (Nakuru) (Unreported)** held at page 2 as follows;

“The principles upon which an appellate court can interfere with the discretion of a trial [Magistrate] as regards sentence are well settled. The appellate court can only interfere where the trial [Magistrate] in assessing the sentence has acted on wrong principles or imposed a sentence which is manifestly inadequate or manifestly excessive. (See Diego vs Republic [1985] KLR 621).”

In the present appeal, the appellant was convicted on the charge of breaking into the house of complainant and stealing therefrom property of a value of Ksh.521/=. The appellant pleaded guilty to the charge and was sentenced to serve seven years imprisonment on the 28th August 2006. The prosecution told the trial court that the appellant was a first offender. The appellant pleads with this court to consider reducing the custodial sentence that was imposed in view of the fact that he had learnt his lesson in the period that he has been in prison. He also promised that he would not repeat the offence if he is released.

I have carefully considered the appellant's plea for reduction of sentence. It is the view of this court that the trial magistrate did not take into account all the circumstances of the case before he sentenced the appellant to serve the said custodial sentence. The trial magistrate did not take into account the value of the items stolen. He further failed to take into consideration that the appellant was a first offender. No circumstances existed that would have made the trial magistrate sentence the appellant to serve the said term of imprisonment. It is the view of this court that the said sentence was therefore excessive in the circumstances.

I will therefore allow the appeal on sentence. I will set aside the sentence imposed by the trial magistrate and substitute it with an appropriate sentence of this court. I commute the sentence of the appellant to the period already served. The appellant is ordered released from prison forthwith and set at liberty unless otherwise lawfully held.

DATED at NAKURU this 14th day of December 2007

L. KIMARU

JUDG