

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal No. 303 & 300 & 301 of 2004

EVANSON MUIRURI NJOGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Evanson Muiruri Njogu, was charged with others separately with three similar criminal offences of **shop breaking and stealing contrary to Section 306(a)** of the **Penal Code**. The particulars of the charge were that between the nights of the 18th and the 20th of October 2004 at Sipili and Kinamba Trading Centres, Laikipia District the appellant jointly with others not before court, broke into shops belonging to various complainants and stole therefrom assorted goods of trade belonging to the said complainants as stated in the charge sheets. In all the three criminal cases the appellant pleaded guilty to the charge. In the first case, he was sentenced to serve three years imprisonment on each limb of the offence. The said sentences were ordered to run concurrently. In the second case he was ordered to serve six years imprisonment and four years imprisonment respectively in respect of the two limbs of the offence. In the third case, he was sentenced to serve five years imprisonment. The appellant was aggrieved by his conviction and sentence and appealed to this court.

At the hearing of the appeal the appellant abandoned his appeal on conviction. Instead, he pleaded with the court to consolidate the sentences that were meted out on him on the three separate criminal cases. He further prayed for the court to reduce the term of imprisonment that was imposed on him by the trial magistrate. Mr Koech, learned counsel for the State, did not oppose the plea. He left the issue of sentence to the court.

I have perused the record of the lower court in respect of the three criminal cases that were filed by the prosecution against the appellant. In two of the cases, the appellant pleaded guilty to the offences and was sentenced on the same day. The ideal situation in such cases is that the appellant ought to have been charged in one criminal case but with the offences constituting separate counts in the charge sheet. In the one remaining case, the appellant was brought to court three days later and pleaded guilty to the charge. After considering the appellant's plea, it is my considered opinion that the appellant has made a case for this court to consolidate the sentences that were imposed on him. The appellant was charged and convicted for similar offences of breaking into a shop and stealing therefrom. In the three criminal cases that he faced with he pleaded guilty to the charges. He admitted his guilt. In the submissions made before this court he told the court that he had reformed and had trained in carpentry and would be a good citizen if released. The appellant was sentenced to serve the imprisonment terms on the 26th of October 2004 and the 29th of October 2004 respectively. I will therefore allow his plea for consolidation of the sentences.

I therefore order the sentences which were meted out on the appellant in **Nyahururu PMC Criminal Case No. 4582 of 2004**, **Nyahururu PMC Criminal Case No. 4580 of 2004** and **Nyahururu PMC Criminal Case No. 4579 of 2004** be and are hereby consolidated. The appellant will therefore serve one sentence *i.e.* six years imprisonment in respect of all the offences that he was convicted. The appellant's appeal is therefore allowed to that extent. The sentence of six years imprisonment shall take effect from the 26th of October 2004. It is so ordered.

DATED at NAKURU this 10th day of March 2006.

L. KIMARU

JUDGE