

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal 302, 299 & 304 of 2004

PETER WARUTERE NGIGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Peter Warutere Ngigi was charged with others in three separate criminal cases with the offences of **shop breaking and stealing contrary to Section 306(a) of the Penal Code**. The particulars of the offences were that between the night of the 18th and 20th of October, 2004, the appellant jointly with others not before court broke into and entered three shops belonging to three complainants at Sipili and Kinamba trading centres, Laikipia District and stole therefrom various goods of trade belonging to the said complainants. The appellant pleaded guilty to the three charges. In **Nyahururu PMC Criminal Case No. 4582 of 2004**, the appellant was sentenced to serve three years imprisonment on each limb of the offence. The sentences were ordered to run concurrently. In **Nyahururu PMC Criminal Case No. 4586 of 2004**, the appellant was sentenced to serve six years imprisonment. In **Nyahururu PMC Criminal case No. 4579 of 2004**, the appellant was sentenced to serve five years imprisonment on the first limb and four years imprisonment on the second limb of the charges. The appellant was aggrieved by his convictions and sentences and duly filed three separate appeals to this court against the said convictions and sentences.

Although the appellant challenged his conviction and sentence in his petition of appeal, during the hearing of the appeal, the appellant abandoned his appeal against conviction. He however pleaded with this court to consolidate the three sentences which were meted out on him by the trial magistrate in the three criminal cases. He further pleaded for the said sentence to be reviewed so that he would serve a shorter term of imprisonment. Mr Koech for the State did not oppose the submissions made by the appellant. He left the issue of sentence to discretion of the court.

I have perused the proceedings of the lower court in respect of which the appellant was separately sentenced in the three criminal cases that were filed against him. Ideally, the prosecution should have charged the appellant in one criminal case but containing three separate charges against him in one charge sheet. But as it were the appellant was separately charged in three different criminal cases and convicted and sentenced separately in the three criminal cases when he admitted the offences within a span of three days. The result of the said convictions and sentences is that the appellant would have been condemned to serve the three sentences consecutively rather than concurrently if he was charged in one criminal case.

Having considered the submissions made by the appellant, I do agree with him that he was prejudiced and had been occasioned miscarriage of justice on account of the decision by the prosecution to charge him separately for the three offences which he was convicted. I will therefore allow the appeal filed by the appellant to the extent that I will order the sentences which were meted out by the trial magistrate in **Nyahururu PMC Criminal Case No. 4579, 4582 and 4586 of 2004** be consolidated. All the other sentences which were meted out on the appellant by the trial magistrate will run concurrently instead of consecutively. The appellant shall therefore serve one sentence being six years imprisonment with effect from the 26th of October 2004. It is so ordered.

DATED at NAKURU this 10th day of March 2006.

L. KIMARU

JUDGE