

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal No. 239 & 240 of 2004

MWANGI KIMANI NYAGUTHIA.....1ST APPELLANT

DAVID IRUNGU MUCHIRI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellants were charged with the offence of house breaking contrary to **Section 304(1)** and stealing contrary to **Section 279(B)** of the **Penal Code**. They also faced an alternative charge of handling stolen goods contrary to **Section 322(2)** of the **Penal Code**. They faced a further charge of stealing contrary to **section 275** of the **Penal Code**. In the first count the particulars of the offence were that on the 7th August 2004 at Gatero village in Laikipia District within the Rift valley Province jointly broke and entered the dwelling house of Samuel Mwangi Wahome with intent to steal therein and did steal one mattress and two blankets all valued at Kshs.2,500/- the property of the said Samuel Mwangi Wahome. The alternative charge related to the handling of the said mattress on the said date. On the other count, the particulars were that on 7th August 2004, at Gatero village in Laikipia District within the Rift Valley Province, they jointly stole one sufuria and a wheel barrow all valued at Kshs.4,250/- the property of Julius Kariuki Gathuo.

Both appellants pleaded guilty and were sentenced to serve five years imprisonment on the first limb of the count of house breaking and two years imprisonment on the other limb of stealing. On count two, they were sentenced to serve one year imprisonment. All the sentences were to run consecutively. This meant that they were to serve a total of eight years imprisonment each.

The appellants were aggrieved by the said sentences and appealed against them saying that they were it was harsh and excessive and pleaded with the court to reduce the same.

Mr. Koech, learned state counsel left the matter to the court's discretion but was of the view that the sentences in the first count should have been ordered to run concurrently.

I have considered the sentences that were pronounced by the trial court and I believe the trial magistrate erred in ordering separate and consecutive sentences particularly with regard to the offences in count one. It is trite law that concurrent sentences should be awarded for offences committed in one criminal transaction. It was so held in ***NGANGA VS REPUBLIC (1981) KLR 530*** where the appellant was convicted of house breaking and stealing which offences had been committed at the same time. The trial magistrate awarded consecutive sentences but on appeal the court held that the trial magistrate should have ordered the sentences to run concurrently.

I have also considered the nature of the offences and in my view the sentences that were handed down were rather harsh. I will allow the appeal and quash the sentence that was pronounced in respect of count one and substitute the same with a jail term of one year on each limb and the sentences will run concurrently. On the second count I will also quash the sentence that was pronounced by the trial court and substitute the same with a jail term of one year as well. Consequently, the appellants will be released from jail unless otherwise lawfully held as they have served the jail term now substituted herein.

DATED, SIGNED AND DELIVERED at Nakuru this 3rd day of March, 2006.

D. MUSINGA

JUDGE