

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Criminal Appeal 11 of 2005

FRED WANYAMA WAMAYENGO.....APPELLANT

VS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with burglary and stealing contrary to section 304 (2) and section 279 (b) of the Penal code.

The particulars on count 1 are that on the night of 31st December, 2003 and 1st January 2004 at Kamusinga Boys' High School in Bungoma District within Western Province jointly broke and entered the dwelling house of one Nelson Mulongo with intent to steal therein and did steal therein one mattress, one mosquito net, one blanket and two bed sheets all valued at Ksh.3,850/= the properties of the said Nelson Mulongo.

The particulars on count 2 are that on the 4th day of January 2004, at Kimilili Township in Bungoma District within Western Province, otherwise in the course of stealing dishonestly retained one mattress, one mosquito net and one bed sheet knowing or having reason to believe them to have been stolen goods.

The appellant appealed against his conviction and sentence. At the hearing he(appellant) abandoned appeal on conviction. He pursued appeal on sentence only.

On sentence, he urged that the same was harsh and excessive in all the circumstances of the case.

The state supported the sentence. Mr. Onderi urged that since the appellant was charged under section 304 (2) and section 279 of the Penal Code carrying a maximum sentence of 10 years and 14 years respectively, the sentence was deserved and indeed lenient.

That there were (2) counts of the same charge and the appellant was convicted on both. First count: 3 years imprisonment on each limb. Second count: 3 years imprisonment on each limb. The trial court ordered that the sentence was to run concurrently. The appellant is serving 3 years on both counts. On the premises the sentence cannot be said to be harsh and excessive. Mr. Onderi urged that the appeal be dismissed.

I have on my part scanned through the proceedings and the law. I take the position that the law provides for the maximum sentence of 10 years as relates to section 304 (2) and 14 years as relates top section 279. There were two (2) counts of the same charge. The appellant was convicted on both and sentenced to serve 3 years on first count and 3 years on the second counts. The sentence to run concurrently. A sentence of 3 years on the premises cannot be harsh and excessive.

I find that the appeal has no merit. Accordingly, I dismiss the appeal. Right of appeal in 14 days.

DATED and DELIVERED at BUNGOMA this 2nd day of May 2006.

N.R.O. OMBIJA

JUDGE

Appellant Fred Wanyonyi in person.

Mr. Onderi for Republic