



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**  
**Criminal Appeal 623 of 2004**

**(From Original Conviction and Sentence in Criminal Case No.23139 of 2004 of the Chief Magistrate's Court at Makadara – K Mbugua -RM).**

**GEOFFREY WANDERI CHEGE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant was convicted on his own plea of guilty to a charge of breaking into a building and committing a felony contrary to Section 306 (a) of the Penal Code by the Chief Magistrate's Court at Makadara, Nairobi on 10<sup>th</sup> December, 2004 and sentenced to four (4) years imprisonment.

The Appellant now appeals to this Court on the ground that the sentence imposed on him was inordinately harsh and severe in view of the fact that he was a first offender. The Appellant also states that he is remorseful, that he is an orphan with a wife and children who all look up to him for survival. He prays for the reduction of the sentence.

The State through, Mr. Makura, Learned State Counsel opposed the Appeal on sentence. Counsel submitted that the sentence of 4 years imposed on the Appellant was neither harsh nor excessive. Counsel pointed out that the offence carries a maximum sentence of 7 years imprisonment. Counsel further submitted that the Magistrate took into account the Appellant's mitigation before sentencing him. Finally, Counsel submitted that the Court did not exercise its discretion improperly whilst sentencing the Appellant.

The facts as admitted by the Appellant were that on the fateful day, the Complainant and his employees were asleep in a building when they were suddenly at about 3 a. m. waken up by a loud bang. People were breaking into the building. The people entered the house and started beating them. They also took the property enumerated in the charge sheet valued at Kshs.15,000/=. In the process neighbours came to the rescue of the Complainant and the robbers escaped. They were however pursued and the Appellant was arrested. The Complainant was able to identify the Appellant. The Appellant was then charged.

The Appellate Court will only interfere with the sentence imposed by the trial Court if it is shown that the sentence was illegal, harsh and excessive or that the Court took into account immaterial factors or overlooked some material factors. Finally if it is also demonstrated that the trial Court exercised its discretion in sentencing capriciously, an Appellate Court would generally interfere to remedy the situation.

See generally, **OGALO S/O OWUORA VS REPUBLIC (1954) 19 EACA 270, JAMES VS REPUBLIC (1950) 10 EACA 147, NILSON VS REPUBLIC (1970) EA 599 and WANJEMA VS REPUBLIC (1971) EA 493.**

On sentencing the Appellant, the Learned Magistrate considered all the mitigating circumstances e. g. That the Appellant was an orphan and that he had sought leniency. In sentencing the Appellant the Court properly addressed itself to the sentencing principles. It did not consider irrelevant factors nor did it exercise its discretion capriciously.

Having considered what the Appellant has stated before me and what the Learned State Counsel has said, I am of the view that as the sentence imposed was legal and not manifestly excessive in the circumstances of the case, this Appeal lacks merit. Infact the Appellant should count himself luck for not having been charged with the more serious offence of robbery with violence. The facts as read would appear to support such a charge. Anyhow, having held that the Appeal lacks merit, I would order that the same be and is hereby dismissed.

Dated at Nairobi this 31<sup>st</sup> day of July, 2006.

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**MAKHANDIA**

**JUDGE**