

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 342 of 2003

(From original conviction and sentence in Criminal Case No.2290 of 2003 of Principal Magistrate's Court at Nyahururu –L. K. MUTAI

DANIEL NDIRANGU MBUGUA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant and his co-accused, James Gichuki Wachira were charged with burglary and stealing contrary to Sections 304(2) and 279(b) of the Penal Code. They also faced an alternative charge of handling stolen property.

The appellant pleaded guilty and was convicted and sentenced to seven years imprisonment and 4 strokes of the cane. The appellant appealed against the said sentence, saying that the same was harsh and excessive. The learned state counsel Mr. Koech did not wish to say anything regarding the sentence but chose to leave the matter to the court's discretion.

Ordinarily, an appellate court will not interfere with the discretion exercised by the trial court unless it is shown that the trial court acted on wrong principles in passing the sentence or failed to take into consideration some important factors or took into consideration factors which it ought not to have taken at all or where the sentence is shown to be manifestly harsh or excessive. The appellant was a first offender and readily pleaded guilty thus saved the court valuable time. He was also remorseful and pleaded for forgiveness. The things that he stole were valued at Kshs.86,100/- and most of them were recovered. In the circumstances of the case, I am of the view that the sentence handed down by the trial court was excessive.

I will reduce the same to the period already served. The appellant should therefore be set at liberty unless otherwise lawfully held.

DATED, SIGNED & DELIVERED at Nakuru this 21st day of June, 2005

D. MUSINGA

JUDGE

21/6/2005