



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL APPEAL 520 OF 2003

CONSOLIDATED WITH

CRIMINAL APPEALS 519, 518, 517, 516, 515, & 514 OF 2003

**(From original conviction and sentence of the Senior Resident
Magistrate's Court at Narok in Criminal Case No. 268 of 2003 –
S. M. Githinji (S.R.M.)**

PAUL GITAU NDUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Paul Gitau Ndungu, was charged with seven separate counts of burglary and stealing contrary to **Section 304(2) and 279(b) of the Penal Code**. The particulars of the charges were that on various nights between the 15th of March 2003 and the 12th of April 2003, the appellant broke into the houses of the seven complainants who were named in the charge sheets and stole from their houses several household properties and items of personal clothing. The said burglary and theft took place within Narok township. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to all the seven separate counts of burglary and theft. He was sentenced to serve eighteen months imprisonment on each count. However, due to the fact that the appellant had been separately charged with the seven offences, the sentences as per the law ran consecutively instead of concurrently. The appellant was aggrieved by the said sentences imposed on him and has appealed to this court against the same.

In his petition of appeal, the appellant has basically pleaded with this court to consider reducing the term of imprisonment imposed on him. He stated that the custodial sentence imposed on him was manifestly excessive and harsh in the circumstances. He pleaded for this court to reconsider his mitigation and sentence him to an appropriate and less harsh custodial sentence. At the hearing of the appeal, the seven separate appeals filed by the appellant were consolidated and heard as one. In his submissions before court, the appellant reiterated the contents of his petition of appeal. He stated that he had been in prison for two years and four months. He submitted that he had learnt his lesson and would not be a repeat offender. In his view, he had been sufficiently punished for the offences committed. Mr Koech, Learned State Counsel, in reply, submitted that the State would have no problem if the sentences imposed on the appellant were ordered to run concurrently instead of consecutively.

I have considered the submissions made by the appellant in this appeal and the reply thereto by the State. The appellant was charged on the same day with seven separate counts of burglary and theft. Instead of all the charges being consolidated in a single charge sheet, seven separate files were opened. The appellant pleaded guilty to the seven separate charges. He was sentenced to serve eighteen months imprisonment on each charge. Due to the fact that the appellant was separately charged for the seven

offences, the sentences imposed on him ran consecutively, instead of concurrently. The appellant has appealed to this court and submitted that the consecutive sentences imposed on him for the offences committed were harsh and excessive in the circumstances. I agree with him.

Unless there was a compelling reason, the sentences imposed on the appellant ought to have run concurrently instead of consecutively. As Mr Koech for the State agrees, I will set aside the said consecutive sentences imposed on the appellant by the trial magistrate and substitute it with a sentence of this court commuting the sentence to be served by the appellant to the period already served. He is therefore set at liberty and released from prison unless otherwise lawfully held.

It is so ordered.

DATED at NAKURU this 5th day of October 2005.

L. KIMARU

JUDGE