



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT BUNGOMA
CR. APPEAL NO. 56 OF 2003**

ROBERT OTIENO OWITI..... APPLICANT

VS

REPUBLIC RESPONDENT

J U D G M E N T

The appellant and another pleaded guilty to a charge of store breaking and committing a felony contrary to section 306 (a) of the Penal Code. The particulars of this charge were that the on night of the 1st and 2nd March 2001 at Oldrex area in Bungoma District within Western Province jointly with others not before court broke and entered the store of Francis Magari Mwiruri and stole one mattress, 4 sacks of maize, one bicycle, one bed cover, 2 bed sheets and 50 kgs of rice all valued at Ksh.16,100/= from therein.

The appellant and his accomplice were each sentenced to two years imprisonment. Being dissatisfied with the decision the appellant filed this appeal. The appellant has put forward ten grounds of appeal, but I think there is only one ground which is relevant in this appeal. The appellant has stated that the sentence tendered is too excessive in the circumstances of this case. The appellant admits that he pleaded guilty to the charge and that he was rightfully convicted.

This ground was opposed by mr. Kemo, the learned state counsel. Mr Kemo was of the view that the sentence tendered was lenient because the

law allowed for corporal punishment which was not slapped on the appellant and his accomplice.

I have perused the record of appeal presented to this court. I am satisfied that the appellant and his accomplice were properly convicted upon entering a plea of guilty. The principles of sentencing are well settled. I refer to the case of **WANJEMA VS REPUBLIC (1971) E.A. 493.** In which Trevelyan J. said.

“An appellate court should not interfere with the discretion which a trial court has exercised as to the sentence unless it is evident that it overlooked some material factors, took into consideration some immaterial fact, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

Taking into account these principles in relation to this appeal I am of the view that the learned Senior Resident Magistrate considered the appellant’s mitigation and the fact that he was a first offender, before sentencing the appellant. The law under Section 306 of the Penal Code imposes a Sentence of 7 years imprisonment to a person who has been convicted under the Section. Of course the law has been amended and corporal punishment done away with.

The appellant has not pointed out the principles the learned Senior Resident Magistrate breached when sentencing the appellant.

Consequently, the appellant’s appeal lacks merit. The same is dismissed in its entirety.

READ AND DELIVERED THIS 27th DAY OF January 2004

J.K. SERGON

JUDGE