REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CR. APPEAL NO. 96 OF 2003
(From Busia Criminal Case No. 1558 of 2003 Before B. Maloba SRM)

ALI OOKO ODONGO …… APPELLANT

VS

REPUBLIC ……. REPUBLIC

J U D G M E N T

The appellant pleaded guilty to a charge of burglary contrary to section 304 (2) and stealing contrary to Section 279 (b) of the penal code. The particulars of the charge are that on the night of the 2nd and 3rd September 2003 at unknown time at Legio Estate Busia township Location in Busia District within western province, jointly with others already before court, broke and entered a dwelling house of Peter Ochier with intent to steal therein and did steal therein one generator make Honda, one Sonny colour T.V. size 21" one video deck make national, radio cassette make royal and one table cloth all valued at Ksh.139,000/= the property of Peter Ochier.

The appellant was convicted and sentenced to serve 4 years imprisonment on each limb.

The appellant argued his appeal in person using Kiswahili language as translated by the court clerk. The thrust of his appeal is that the trial court used English language when taking the plea therefore he did not understand the language of the court. The second ground is that the sentence slapped on him by the trial court is manifestly excessive and harsh.

The Senior learned state counsel opposed the appeal. He was of the view that the trial court properly convicted the appellant because he understood the languages used by the court. He also submitted to the effect that the sentences were not harsh nor excessive.

I have examined the record of appeal. It reveals that the languages used by the trial court at the time of taking the plea was English and Kiswahili. However there is no mention as to what language the appellant used before the trial court. However when the appeal came up for hearing the appellant used Kiswahili language to argue his appeal. The same language was used before the trial court when taking plea. I therefore find no substance on the ground attacking conviction. I am of the view that the plea was properly taken and the appellant pleaded having understood the charge facing him.

It has also been agitated that the sentence is too harsh and excessive. This court in the case of **WANJEMA VS REPUBLIC (1970) E.A. at 494.** stated:

"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

account some immaterial fact, acted on a wrong principle or

the sentence is manifestly excessive in the circumstances of the case."

It would appear when sentencing the trial magistrate did not consider the fact that the appellant was a first offender. However the failure by the trial magistrate to do so did not occasion a miscarriage of justice because the sentence tendered does not appear to be harsh nor excessive. I find that the appeal lacks in merit. It is dismissed in its entirety.

DATED AND DELIVERED THIS 4th DAY OF June 2004.

J.K. SERGON

JUDGE