

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 591 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 2820 of 2000 of the Chief Magistrate's Court at Mombasa – A. W. Ngugi, Ms. – R.M.)

JOSEPH KARANJA KIBUE.....APPELLANT
=V E R S U S=
REPUBLIC.....RESPONDENT

JUDGMENT OF COURT

The Appellant was charged with Burglary and Stealing contrary to Section 305(2) and Section 279(b) of the Penal Code. He was convicted of both counts and sentenced to three years in respect to each offence the sentences to run consecutively. This means that the total sentence is 6 years with two strokes of the cane.

When he was arguing his appeal the appellant abandoned his appeal on conviction and requested this court to consider only the sentence and reduce it because it was too long considering the circumstances of the case.

The facts of the case indicate that the appellant was caught in the process of stealing after the burglary. Goods stolen were almost all recovered after the appellant led the Police thereto. Although he did not plead guilty in the lower court, he abandoned the main part of the appeal before this court. He is a first offender. Although two offences ended up being committed, they arose from one single transaction. The State Counsel indicated that in its discretion this court may consider to order for a concurrent serving of the sentence.

I have considered all the mitigating factors and taken into account the opinion of the State Counsel. I am of the view that this may be a suitable case where the sentences should be served concurrently. I have no reason to interfere with the actual sentence of three years for each count.

I accordingly order that the two sentences of three years each be served by the Accused concurrently. The practical effect of this is to reduce the period to three years. The Appellant must receive the two strokes of the cane as ordered by the lower court. It is so ordered.

Dated and delivered at Mombasa this 21st day of March, 2002.

D. A. ONYANCHA
J U D G E

