

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.464 OF 1999

(Being an appeal from Original Conviction and Sentence in Criminal Case No.3994 of 1999 of the “Chief Magistrate’s Court at Mombasa –B. Maloba, RM)

AYONS MBAAZI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant was charged with others of breaking a room contrary to section 306(a) and stealing contrary to section 279(h) of the Penal Code. The appellant pleaded guilty and was convicted and sentenced. He has filed this appeal against sentence only. In the same case he was charged with 4 other accused, three of whom were acquitted under Section 215 Criminal Procedure Code, but one was convicted and sentenced to 2 years imprisonment and 3 strokes of the cane. This was after a full trial. From the facts of the case stated by the prosecutor the Appellant was found with 225 Dutch Guilds and this the appellant admitted. The trial magistrate imposed an imprisonment term of 3 years together with 3 strokes of the cane on each limb of the offence.

The maximum sentence specified for these offences is 7 years and 14 years respectively together with corporal punishment. The issue of passing sentence is always in the discretion of the trial court and the Appellate Court will not interfere unless the sentence is excessive or illegal. In this case the sentence imposed cannot be said to be excessive or illegal. However the punishment for same offence should be uniform unless there are circumstances that warrants distinction between co-accused. I find no such circumstances here and for the sake of uniformity it is my opinion that the period of imprisonment should be reduced to be similar to that of the co-accused.

The outcome is therefore that imprisonment term for the term of 3 years is hereby set aside and substituted with one of 2 years. The sentence shall therefore be for a period of 2 years and 3 strokes of the cane. The appeal is allowed to that extent.

Dated at Mombasa this 29th Day of August, 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in present of State Counsel Ogoti and Appellant in open Court.

J. KHAMINWA

COMMISSIONER OF ASSIZE

