

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL DIVISION

CRIM APP 177 OF 00[1]

KINGI JULIUS NZAI APPELLANT

- versus -

REPUBLIC RESPONDENT

J U D G E M E N T

Appellant was charged with burglary and stealing contrary to Section 304(2) & 279 (b) of the Penal Code. It was alleged that on 12/13 April, 2000 at Kwa Hadija Village Watamu village in Malindi District he entered and broke into and stole therein one radio cassette, one car battery, one bag, 22 cassettes and cash KShs.2,500/- total value of KShs.13,000/-. He pleaded guilty and was convicted on his plea. He was sentenced to 3 years and 5 strokes of the cane and he now appeals against the sentence. He has not said much but wishes that the corporal punishment be waived. Mr. Gumo Senior State Counsel supports the sentence in any case.

The principle this court applies on first appeal as to sentence is that it would not interfere with the discretion of trial court below unless the sentence awarded is against the principles or is too excessive or too lenient as to amount to application of wrong principle.

Here the maximum is 10 years together with corporal punishment. He was given 3 as against that, but although it is lenient it must be realized that he was a first offender and pleaded guilty. I think the award of 5 strokes was a little high handed. The learned Magistrate in my view did not properly exercise her discretion here and I feel I should interfere. I will retain the 3 years sentence but reduce the corporal punishment to 1 stroke of the cane. Appeal therefore succeeds as to that extent.

Dated this 5th Day of October, 2000.

A.I. HAYANGA

JUDGE