



REPUBLIC OF KENYA



KENYA LAW
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**Kahindi v Republic (Criminal Appeal E126 of 2023)
[2025] KEHC 10270 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10270 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL E126 OF 2023**

**M THANDE, J
JULY 11, 2025**

BETWEEN

REUBEN CHARO KAHINDI APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant was convicted on his own plea of guilty, of the offence of burglary contrary to Section 304(2) and stealing contrary to Section 279(b) of the *Penal Code*. The particulars of the offence are that on the night of 14th and 15th October 2023 at Mutsanga Mali village, Marereni location in Magarini subcounty, the Appellant broke and entered the dwelling house of Boniface Barasa with intent to steal from therein 2 mattresses, 50kgs of maize, 25kg of cow peas, 3 cups, 4 plates, 1 bucket, 1 hot dish and a knife all valued at Kshs. 10,630/=, the property of Boniface Barasa.
2. Following his conviction, the Appellant was sentenced to 4 years imprisonment.
3. The Appellant has appealed against both the conviction and sentence. His grounds are that the learned Magistrate erred in law and fact by failing to evaluate the prosecution evidence and to consider that the prosecution failed to prove its case beyond reasonable doubt and did not consider his defence. Further that the trial Magistrate failed to consider that the sentence imposed is what is provided by law and stripped the court of discretion.
4. It is clear that the Appellant's grounds do not take into account the fact that he was convicted on his own plea of guilty. Further, he even refers to the offence of defilement which is not what he was charged with.
5. Instead of submissions, the Appellant filed what he refers to as mitigation prayers. He stated that he was not challenging his conviction. He however urged the Court to consider that he is the sole provider for his 7 school going children and 2 siblings. He urged the Court to review his sentence and give him



a noncustodial sentence considering he is a first offender. He urged that he has learnt a lot and is now reformed and will not repeat the offence.

6. The Appeal is opposed by the Respondent vide submissions dated 13.5.25.
7. The law disallows appeals on a plea of guilty. An appeal on a plea of guilty is however only allowable on sentence with regard to the extent or legality thereof. Section 348 of the *Criminal Procedure Code* provides as follows:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

8. As indicated herein, the Appellant does not challenge the conviction or the legality of the sentence. He seeks in effect, a review of sentence on the basis of the mitigating circumstances set out.
9. The maximum sentence that may be imposed on a person convicted of the offences of burglary and stealing as the Appellant was, is 10 years and 14 years imprisonment respectively. Contrary to the assertion of the Appellant, the offence does not carry a mandatory minimum sentence.
10. In exercise of its discretion, the trial court sentenced the Appellant not to the maximum sentence, but to a lenient 4 years in prison for each offence, to run concurrently.
11. In *John Waweru Njoka v Republic* [2001] eKLR had this to say on the discretion of the court on sentencing in respect of offences committed in one transaction:

In law it lies in the discretion of the Court to order whether sentences should run concurrently or consecutively. Nevertheless, it is an established principle of law that where offences are committed in one transaction, the sentences ought to run concurrently even when laid in separate counts.

12. Sentencing is a matter of judicial discretion and it is well settled that appellate courts must exercise restraint in interfering with judicial discretion. In the case of *Mbogo v Shah* [1968] EA 93 the Court of Appeal considered an invitation to interfere with the exercise of judicial discretion and stated:

[A] Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.

13. Having reviewed the impugned decision and duly guided by the holding by the Court of Appeal I find that there is nothing to show that the trial court in the exercise his discretion, misdirected itself in some matter thereby arriving at a wrong decision. The Appellant has not argued or even suggested that the trial court was clearly wrong in exercising its discretion in imposing as it did, the concurrent sentence of 4 years imprisonment, thereby occasioning a miscarriage of justice. He has also not demonstrated that the trial court acted on wrong principle or omitted relevant factors or took into account irrelevant factors in sentencing. In the absence of any manifest irregularity or illegality in the sentence I find no basis for interfering with the discretion of the trial court or to upset the sentence imposed.
14. In the end, and for the stated reasons, I find and hold that the Appeal herein lacks merit and the same is hereby dismissed.

DATED SIGNED AND DELIVERED IN MALINDI THIS 11TH DAY OF JULY 2025



M. THANDE
JUDGE

