



**Guluma alias Adan & another v Republic (Criminal Appeal
E007 of 2024) [2024] KEHC 5905 (KLR) (22 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5905 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL APPEAL E007 OF 2024**

JN NJAGI, J

MAY 22, 2024

BETWEEN

ADAN GULUMA ALIAS ADAN 1ST APPELLANT

SIRINGO SHANO BOBO 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction and sentence by Hon.S. K. Arome,
Principal Magistrate, in Marsabit MCCR Case No. E174 of 2023 delivered on 8/11/2023)*

JUDGMENT

1. The two appellants were convicted on their own plea of guilty for the offence of breaking into a building and committing a felony contrary to section 306(a) of the *Penal Code*. The particulars of the offence were that on the 29th September 2023 at Marsabit town in Marsabit Central Sub County within Marsabit County they broke and entered the building, namely God is Good Wholesale shop of Weldo Ayile Aftiyes (herein referred to as the complainant) and stole therein Oppo Reno 5 IMEI 860476051122852 valued at Ksh. 25,000/=, Oppo Reno 4 IMEI 353290079599050 valued at Ksh.18,000/=, and Armco woofer valued at Ksh.7,500/=, all to the total value of Ksh.50,500/=.
2. The appellants were each sentenced to serve 7 yeas imprisonment. They were aggrieved by the sentence and filed this appeal. The only ground of appeal is that the trial magistrate failed to consider their mitigation.
3. The appeal proceeded both by way of oral submissions and written submissions. The 1st appellant made oral submissions and stated that he was a first offender and that he has a small child to look after. That the child is suffering due to his incarceration.



4. The 2nd appellant made written submission and stated that the sentence meted on him was harsh and excessive. That the trial court failed to consider his mitigation that he was a first offender.
5. The respondent made written submissions and submitted that the appellants were correctly convicted for the offence on their own plea of guilty. That the maximum sentence for the offence is 7 years imprisonment. That by the court giving the appellants the maximum sentence, they did not benefit for pleading guilty, yet they saved the court's valuable time by pleading guilty and they were first offenders. The respondent agreed with the appellants that the sentence was manifestly harsh and should be reviewed.
6. The appeal is on the sentence meted out on the appellants. Their argument is that the sentence of 7 years imprisonment meted out on each one of them was harsh and excessive.
7. The appellants were charged under section 306 (a) of the *Penal Code* which provides that a person convicted for the offence of breaking into a building and committing a felony is liable to a sentence of 7 years imprisonment. The appellants were given the maximum sentence for the offence.
8. In *Shadrack Kipchoge Kogo v Republic*, Eldoret Criminal Appeal No 253 of 2003 (quoted in *Arthur Muya Muriuki v Republic* (2015) eKLR), the Court of Appeal stated the following on principles of sentencing: -

“Sentencing is essentially an exercise of the trial court and for the court to interfere, it must be shown that in passing sentence, the court took into account an irrelevant factor or that a wrong principle was applied or short of these the sentence was so harsh and excessive that an error in principle must be inferred.”
9. It is a principle of sentencing that a maximum sentence should not be imposed on a first offender – see *Otieno v Republic* (1983) KLR 295. Also, that maximum sentences are intended for the worst kind of offender.
10. The appellants in this case were first offenders. I agree with the respondent that the sentence of 7 years imprisonment was harsh and manifestly excessive. The appellants in pleading guilty to the charge saved the court's precious time and ought to have benefited from that gesture.
10. The 1st appellant, Adan Guluma, mitigated before the trial court that he had a child and was the sole bread winner. The 2nd appellant, Siringo, mitigated that he had a family and was the sole bread winner.
11. The trial court in sentencing the appellants stated that house breaking had become rampant within Marsabit town and therefore that the offence deserved a deterrent sentence. A deterrent sentence however did not call for the maximum sentence.
12. I have considered all the circumstances of the case, including that the items stolen were valued at Ksh.50,000/= . The appellants have established that they deserve a lesser sentence. The sentence on each of the appellants is reduced to three years imprisonment. The same to commence from the date of plea, i.e. 30th November, 2023.

DELIVERED, DATED AND SIGNED AT MARSABIT THIS 22ND DAY OF MAY 2024

J. N. NJAGI

JUDGE

In the presence of:-

Mr. Otieno for Respondent



1st Appellant - present in person

2nd Appellant – present in person

Court Assistant – Jarso

14 days R/A.

