



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Muendo v Republic (Criminal Appeal E019 of 2022)  
[2023] KEHC 3971 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E019 OF 2022**

**GMA DULU, J**

**MAY 4, 2023**

**FROM THE CONVICTION AND SENTENCE IN CRIMINAL CASE NO.  
E034 OF 2021 BY HON. J. N. MWANIKI – CM ON 1<sup>ST</sup> FEBRUARY, 2021**

**BETWEEN**

**JOSHUA WAMBUA MUENDO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the conviction and sentence in Criminal Case No. E034  
of 2021 by Hon. J. N. Mwaniki – CM on 1st February, 2021)*

**JUDGMENT**

1. The appellant was recorded by the trial court, as having been convicted on his own plea of guilty to a charge of house breaking contrary to Section 304 (1) and stealing contrary to Section 279 (b) of the [Penal Code](#).
2. He was then sentenced to 7 years imprisonment on each limb of the offence, the sentences to run concurrently.
3. He has now come to this court on appeal against sentence on the following grounds:-
  1. That he is remorseful and regrets the act of crime he committed.
  2. That he is young under 20 years and the sentence imposed is disastrous at his age.
  3. That he entreats this court for non-custodial or community based sentence.
  4. That he wants the sentence reduced or redacted to the time served.



4. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions. I note that the Director of Public Prosecutions has left the matter of sentence to this court for determination.
5. Having perused the record of the trial court, in my view the plea of guilty was properly taken by the trial court.
6. With regard to sentence, indeed sentencing is an exercise of discretionary power by a trial court after taking into account all relevant factors, such as the nature of the offence, the set statutory sentence, the circumstances of commission of the offence and all aggravating and mitigating factors disclosed to the trial court.
7. I note that the Magistrate noted that the appellant was a few months below 18 years at the time of sentencing. He was also not a first offender, having been found to be in conflict with the law in a sexual offence and placed on 3 years probation in Sexual Offence Number 44 of 2018.
8. However in the present case, I observe that the appellant pleaded guilty to the offence, the items stolen were worth only Kshs 5,550/= and mainly clothing items which were recovered, and he was a minor, that is below 18 years. Each case has to be considered on its own circumstances in determining the appropriate sentence.
9. In my view, bearing the above factors in mind, and especially the fact that the appellant was a minor, he should not have been put in prison by the trial court but under alternative penalty as provided for under Section 190 of the *Children's Act* Number 8 of 2001.
10. Since the maximum sentence for adults under Section 304 of the *Penal Code* is 7 years imprisonment and the maximum sentence under Section 279 (b) is 14 years imprisonment, and the appellant being a minor and having served imprisonment from February 1, 2021 which is more than two (2) years now, I order that the prison sentence he has served to date be and is deemed as adequate punishment.
11. The appellant will thus be released from custody unless otherwise lawfully held. He is however warned by this court to desist from further illegal conduct, as courts will henceforth no longer be lenient to him.

**DATED, SIGNED AND DELIVERED THIS 4<sup>TH</sup> DAY OF MAY, 2023 VIRTUALLY FROM VOI.**

**GEORGE DULU**

**JUDGE**

**In the virtual presence of: -**

The appellant

Mr Kazungu for state

**Mr Mwendwa court assistant**

