



REPUBLIC OF KENYA



**Rua v Republic (Criminal Appeal E058 of 2021)
[2023] KEHC 18448 (KLR) (13 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E058 OF 2021
GMA DULU, J
JUNE 13, 2023**

BETWEEN

MUSYOKA SERAH RUA APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence in Criminal Case No. E003 of 2021
at Taveta Law Court on 28th May, 2021 by Hon. C. L. Adisa - RM)*

JUDGMENT

1. The appellant was convicted in the Magistrate's Court at Taveta on his own plea of guilty to burglary contrary to Section 304(2), and stealing contrary to Section 279(b) of the [Penal Code](#); particulars of which being that on the night of December 24, 2020 at around 19:00hours at Chumvini "A" Taita Taveta Sub County in Taita Taveta County broke and entered the dwelling house of Serah Ndululu Kaloli with intent to steal and did steal from therein one stove, three sufurias, one torch and ten (10) dresses, the property of Serah Ndululu Kaloki the property being of the value of Kshs 12,900/=
2. After conviction, he was sentenced to fourteen (14) years in custody.
3. He has now come to this court on appeal against both conviction and sentence, raising the grounds of appeal.
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.
5. This being an appeal against both conviction and sentence, I have to consider first of all whether the plea of guilty of the appellant was unequivocal.



6. In this regard, I have perused the record of the trial court. On January 4, 2021 the charge was read in court to the appellant in Kiswahili language and he responded that it was not true, and a plea of not guilty was recorded and the case put for mention on January 7, 2021.
7. On January 7, 2021 the Magistrate was indisposed and proceedings were adjourned. The case was thereafter mentioned on various dates and on May 25, 2021 when the charge was read to him again in English translated to Kiswahili – the appellant stated that it was true and a plea of guilty was entered by the trial court.
8. The facts were then summarized to the appellant and the appellant said that the facts were true. He was thus convicted on his own plea of guilty.
9. In my view, the conviction of the appellant on his own plea of guilty was proper, as the plea taking herein complied with the steps enumerated in the case of *Adan =Versus= Republic* [1973] EA 445.
10. As a consequence of the unequivocal plea, the appellant is debarred under Section 348 of the *Criminal Procedure Code* (Cap75) from appealing against his conviction. I will thus dismiss the appeal against conviction.
11. With regard to sentence, through the Prosecuting Counsel has submitted that the trial court sentenced the appellant to 8 years imprisonment on each of the two limbs of the charge, the record shows that the Magistrate sentenced the appellant to serve 14 years in custody, without distinguishing the two limbs of the charges.
12. In my view, the trial court erred in meting out only one global sentence, as the court should have sentenced separately on each of the two limbs of the charge as each had a distinct sentence, and then determined whether the sentences should be concurrent or consecutive sentences.
13. I note that the present offences were committed at night thus the sentence under the first limb of the charge is a maximum of ten (10) years imprisonment. As the items were stolen from a dwelling house, the maximum sentence for the second limb of the charge is 14 years imprisonment.
14. In dealing with the issue of sentencing, I have to bear in mind that sentencing is an exercise of discretionary power by a trial court – see *Wanjama =Versus= Republic* [1971] EA 493. Thus as an appellate court, I have to be slow in interfering with the discretion exercised by the trial court herein in sentencing the appellant.
15. I have myself independently considered that the appellant had a previous conviction of burglary and stealing. That he pleaded guilty and that the stolen items were not recovered. I have also considered that he threatened the complainant with a panga, and that the value of the items was only Kshs 12,900/=, as well as the position taken by the Director of Public Prosecutions on appeal, that the sentence imposed by the trial court was harsh and excessive.
16. In my view, the circumstances of this case did not warrant imposing the maximum sentence of 14 years imprisonment, and in addition the Magistrate erred in not pronouncing a separate sentence on each of the two limbs of the charge. I will thus interfere with the sentences imposed and order that the appellant will instead serve six (6) years imprisonment on each of the two limbs of the offence, such sentences to run concurrently, thus a total of six (6) years imprisonment.
17. Consequently and for the above reasons, I uphold the conviction of the trial court.
18. I however set aside the sentence imposed by the trial court, and order that the appellant will instead serve six (6) years imprisonment on each of the two limbs of the charge and the sentences will run



concurrently. The appellant will thus serve six (6) years imprisonment from the date he was sentenced by the trial court. right of appeal explained.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JUNE 2023 AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of:-

The appellant

Mr. Sirima for the state

Mr. Otolu – court assistant

