



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**REVISION NO. 55 OF 2021 (E067 OF 2021)**

**LEONARD WANJALA SIMIYU..... APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

The Applicant, Leonard Wanjala Simiyu was convicted on his own plea of guilty of the charge of **Burglary** and **Stealing contrary to Section 304 (4)** and **Section 279 (6)** of the **Penal Code**. From the facts narrated to the court by the Prosecution, the Applicant, with others not before court, on 11<sup>th</sup> June 2020 broke into the house of Nancy Cheruto Mkanda situate at Sitatunga location and stole therefrom various household and electronic goods valued at Kshs 100,000/=. The trial magistrate sentenced the Applicant to respectively serve three (3) and six (6) years imprisonment for the two charges. The sentences were ordered to run concurrently.

The Applicant has made an application before this court to have his sentence revised. He told the court that he was remorseful and regrets committing the offences that he was convicted of. He categorically stated that he had reformed in the period of one about year that he has been in Prison. He had become a better person and was ready to be reintegrated back to the society. He promised not to commit another if the court favourably considers his application for revision of sentence. While in Prison, he had learnt a trade that will enable him to be a better and useful person to the community. On the spiritual front, he had grown and had learnt that crime does not pay. Mr Omooria for the State was not opposed to the Court appropriately exercising its discretion.

When the trial magistrate sentenced the Applicant, he was exercising judicial discretion. This discretion can only be interfered with by an appellate court if it is established that, either the sentence was manifestly harsh or excessive or that it was so lenient as to cause affront to the precepts of justice. This court will interfere with the sentence if it is established that the trial court took into account wrong principles or failed to take into account the relevant sentencing principles.

In the present application, It was clear to this court that the custodial sentence meted out on the Applicant was harsh and excessive taking into consideration the value of the stolen items and the fact that some of the said stolen items were recovered and returned to the complainant. In revising the sentence this court has also taken into consideration the fact that in the period of nearly one (1) year that the Applicant has been in prison, he appears to have learnt the folly of his ways. He is on the path to reform. He is undertaking courses in prison that will make him acquire skills that will make him a useful member of the society upon his release.

In the premises therefore, this court holds that the custodial sentence imposed on the Applicant cannot stand and is hereby set aside. Instead, the Applicant is sentenced to serve a consolidated custodial sentence of three (3) years imprisonment with effect from 29<sup>th</sup> June 2020 when the Applicant was sentenced by the trial court. This court is of the view that the said sentence fits the crime committed. It is so ordered.

**DATED AT KITALE THIS 9TH DAY OF JUNE 2021.**

**L. KIMARU**

**JUDGE**