



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. 22 OF 2020

WAMBUA MUSYOKI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of Hon. A. Ndung'u (S.R.M)

in Makindu Senior Principal Magistrate's Court PMCR Case No. 1054 of 2018

issued on 21st January, 2019).

JUDGMENT

1. The appellant was convicted on his own plea to burglary contrary to section 304(2) and stealing contrary to section 279(b) of the Penal Code and sentenced to 4 years imprisonment, on each limb of the charge, the sentences to run concurrently, thus a total of 4 years imprisonment from 21st January 2019 when he was sentenced.

2. He has now come to this court on sentence only, arguing that his sentence should have taken into account the provisions of section 333(2) of the Criminal Procedure Code (cap. 75) as he was in custody for 5 months during trial.

3. The Prosecuting Counsel in response has left it to this court to determine the matter, and has not filed any response to the appeal of the appellant.

4. I note that the relevant part of section 333 of the Criminal Procedure Code provides as follows -

333(2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from and to include the whole of the day of the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under sub-section (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody"

5. I note that the value of the items stolen herein was about Kshs.500,000/= and that some of the items were recovered. The appellant was also sentenced after the court considered a pre-sentence report filed by the Probation Officer, after he pleaded guilty to the charge and was a first offender. He spent 3 months in custody during trial.

6. Since the State has not opposed the request by the appellant for review of sentence imposed, and taking into account the provisions of section 333(2) of the Criminal Procedure Code above, I reduce the sentence by the 3 months period the appellant was in custody.

7. Thus the concurrent 4 years imprisonment sentence imposed on the appellant is hereby reduced by a period of three (3) months.

DELIVERED, SIGNED & DATED THIS 13TH DAY OF JULY, 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE