



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

HIGH COURT CRIMINAL APPEAL NO. 197 OF 2019

BONIFACE SIMIYU JUMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against the Sentence of the Hon. G Adhiambo – PM)

J U D G M E N T

1. **Boniface Simiyu Juma**, the Appellant, was charged with two (2) counts of breaking into a building and committing a felony Contrary to Section 306 (a) of the Penal Code. It was indicated that having broken into shops owned by **Kelvin Kukubo** and **Boniface Tiembukha Wekuduke**, respectively, situated at Sirisia Market, he stole various items valued at Kshs.14,650/- and Kshs. 20,000/-, respectively.

2. In the alternative, he faced two (2) counts of handling stolen goods following allegations that he retained items identified by the complainants; the retention that was stated to be dishonest and with belief that the goods were stolen.

3. The Appellant admitted the charges at the outset and a plea of guilty was entered on both counts. Facts presented by the prosecution pursuant to the provisions of section 207 of the Criminal Procedure Code (CPC) were admitted hence the conviction and sentence meted out.

3. Aggrieved, he filed grounds of appeal where he averred that the trial magistrate failed to appreciate that the prosecution's case was insufficient and poorly investigated, it was fabricated, speculative such that it didn't warrant a conviction and the sentence of two (2) years imposed was harsh and excessive.

4. In support of his appeal the Appellant filed written submissions where he abandoned the appeal against both the conviction and sentence. In his mitigation he urged that he was satisfied with the conviction and the sentence passed but records in prison were incorrect as he was serving four (4) years imprisonment instead of two, an error that he sought to be corrected.

5. In it's response the State opposed the appeal. It urged that having pleaded guilty to the charge the Appellant could only have appealed against the legality of sentence as provided by Section 348 of the CPC and the sentence meted out was neither harsh nor excessive as the penalty prescribed for the offence was seven (7) years imprisonment.

6. The duty of this court, is to re-evaluate, re-analyze and re-consider afresh what transpired at trial.

7. Although the Appellant was a young adult, he was a repeat offender hence convicted and sentenced to one (1) year imprisonment on each count that were to run consecutively. The copy of the committal warrant on record is very clear. The appellant was directed to serve one (1) year imprisonment on each count, these sentences were to run consecutively. This simply meant that the prison terms were to be served one after another or commonly referred to as back-to-back.

8. In the premises, the appeal herein lacks merit. Accordingly, it is dismissed. The copy of this judgment shall be served upon the Kenya Prisons Service to ensure that their records are correct.

9. It is so ordered.

L. N. MUTENDE,

JUDGE

10.9.2021

DATED, SIGNED AND DELIVERED VIRTUALLY AT BUNGOMA THIS 10TH DAY OF SEPTEMBER, 2021

HON. L N. MUTENDE,

JUDGE

10.9.2021