



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO 9 OF 2019

BYRON NJONI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement (conviction and sentence) of Hon. G.A. Olimo, RM, delivered on 15th January 2019 in Kimili Senior Principal Magistrate's Court in Criminal Case No. 24 of 2019, R v. Byron Njoni)

JUDGEMENT

[Pursuant to section 201 (2) as read with section 200(1) (a) CPC]

1. The appellant has appealed against his conviction and sentence of seven years' imprisonment in count 1 in respect of the offence of house breaking contrary to section 304 (1) (b) and fourteen years' imprisonment in count 2 in respect of the offence of stealing from a dwelling a house contrary to section 279 (b), both of the Penal Code (Cap 63) Laws of Kenya.
2. In this court the appellant has raised four grounds of appeal in his petition of appeal.
3. Ms. Nyakibia, counsel for the respondent conceded both the conviction and sentence on the basis that the appellant was not warned of the penal consequences of pleading guilty.
4. In ground 1 the appellant has stated that the sentence imposed is harsh and excessive in the circumstances of the case. In ground 2 the appellant has faulted the trial court for failing to consider the defence evidence.
5. I have perused the record of the proceedings. I find that the trial court did not warn the appellant of the consequences of pleading guilty. The trial court is under an obligation to warn the accused in respect of the sentence that is provided by the penal statute before he pleads guilty. The court failed to do so. In the circumstances I find that the plea was equivocal.
6. In the premises, I hereby quash the conviction and sentence imposed upon the appellant.
7. Although the stolen properties were recovered the appellant was a repeat offender.
8. Pursuant to the provisions of section 354 (3)(a)(i) of the Criminal Procedure Code (Cap 75) Laws of Kenya, I find that this is a fit case where the interests of justice demand that a re-trial be ordered. I therefore order that the appellant be tried before another magistrate of competent jurisdiction other than the one who convicted and sentenced him.
9. In the meantime, the appellant is to remain in custody pending his being produced in the magisterial court as soon as possible for plea.

Judgement signed and dated at Narok this 19th day of December, 2019

J. M. Bwonwong'a

Judge

And

Judgement signed, dated and delivered in open court at Bungoma this 12th day of February, 2020.

S. N. Riechi

Judge

12/2/2020