



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO. 97 OF 2018

ERICK SHIVOKO KHAKAME.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being appeal from the judgement (conviction and sentence) of Hon. L.N Kiniale, SRM, delivered on 11/09/2018 in the Senior Resident Magistrate's Court at Sirisia in Criminal Case No. 943 of 2018, R v. Erick Shivoko Khakame)

J U D G M E N T

1. The appellant has appealed against his sentence of four (4) years imprisonment in respect of the offence of burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of Penal Code (Cap 63) Laws of Kenya.
2. The appellant has raised four grounds in his petition of appeal in this court.
3. In this court, the appellant abandoned all the grounds of appeal except the ground that challenged the sentence that he now has stated that it was harsh and unsafe. In this regard, it is important to point out that the appellant was convicted on his own plea of guilty of the composite offence of burglary and stealing a motor cycle valued at Kshs 110,000/=.
4. He was then sentenced to four (4) years imprisonment.
5. In his mitigation, the appellant told the court that he had ulcers. He also told the court that he had a family of four children who depended upon him. The prosecutor also told the court that the appellant was a first offender. The stolen motor cycle was recovered in Nakuru using a tracking device, which had been fitted in the said motor cycle.
6. In sentencing the appellant, the trial court stated that it noted the mitigation. The court found that he was not remorseful despite having pleaded guilty. The court then proceeded to sentence him to four years' imprisonment.
7. In sentencing the appellant, the trial court was required to take into account both the mitigating and aggravating factors and the circumstances of the case.
8. The mitigating factors are self-evident, and I need not replicate them. The mitigating factors were considered except that his being a first offender was not taken into account. Additionally, the fact that he had been in custody since 6th September 2018 was also not taken into account as mandatorily required of it by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya. The custody period translated into about three months. Finally, the fact that the motor cycle was recovered was not taken into account. These in essence were the mitigating factors that were not considered.
9. The aggravating factors were that the offence was committed at night and that the owner was deprived of its use before it was released to him by the court on 11/09/2018.
10. After taking into account all the foregoing matters, I find that this court is entitled to interfere with the sentencing discretion of the trial court for those errors of law and fact that were committed by the trial court.
11. In the premises, I find that the sentence imposed was manifestly excessive and is hereby reduced to the one that the appellant has already served with the result that he is hereby ordered released unless otherwise held on other lawful warrants.

Judgement signed and dated at Narok this 12th day of March, 2020.

J. M. Bwonwong'a

Judge

And

Judgement signed, dated and delivered in open court at Bungoma this 1st day of April,2020.

S. N. Riechi

Judge

1/4/2020