

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NANYUKI

CRIMINAL APPEAL NO 6 OF 2016

BENARD AJWANG' OGILA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Sentence dated 11/03/2015 in Nanyuki

CM Criminal Case No 190 of 2014 – E Bett, SRM)

J U D G M E N T

1. The Appellant herein, **BERNARD AJWANG' OGILA**, was convicted after trial, of *shop breaking and stealing* contrary to **section 306(a)** of the *Penal Code*. It was alleged that in the night of 18th and 19th February, 2014 in *Nanyuki Town* in *Laikipia County*, with intent to steal, he broke and entered the shop of one **MERCY NYAWIRA KIGUTA** and stole from therein shop goods (listed in a schedule attached to the charge sheet) valued at KShs 65,000/00, the property of the said complainant. On 11/03/2015 the Appellant was sentenced to 5 years imprisonment. He has appealed against that sentence only.
2. I have considered the Appellant's submissions and those of the Respondent (through its learned counsel) who opposed the appeal. Indeed as stated by the learned counsel, the sentence imposed upon the Appellant was lawful. The only issue to consider is whether it was manifestly harsh or excessive in the circumstances.
3. The maximum sentence imposed by the law for the offence is 7 years imprisonment. The Appellant got five 5 years, more than two-thirds of the maximum. He was a first offender whose mitigation was that he had a wife and children. His plea to the trial was that he be given a non-custodial sentence. This court was informed by the learned prosecution counsel that all the stolen goods were recovered.
4. In the particular circumstances of this case, I consider that a sentence of 5 years imprisonment was manifestly excessive. This court is therefore entitled to interfere with it.
5. I will therefore partially allow this appeal against sentence by setting aside the sentence of 5 years imprisonment imposed upon the Appellant and substituting therefor a term of imprisonment of four (4) years imprisonment with effect from the date of the original sentencing, 11th March, 2015.
6. This therefore means that the Appellant has already served his sentence, and he should be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 2ND DAY OF APRIL 2019.

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 3RD DAY OF APRIL 2019