



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 30 OF 2018 (CONSOLIDATED WITH 31 OF 2018)

SIMON PETER.....1ST APPELLANT

PAUL KIBET KIPKEMOI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Principal Magistrate's Court at Kabarnet Criminal Case no. 893 of 2016 delivered on the 24th day of March 2017 by Hon. E.M. Ayuka, RM]

JUDGMENT

1. The appellants Simon Peter and Paul Kibet Kipkemoi were on 22/6/2018 convicted and sentenced to imprisonment for 3 years for the offence of Breaking into a building and committing a felony contrary to section 306 (2) of the Penal Code, the felony being stealing "one sack of clothing valued at Ksh.45,000/= ". The appellants have, therefore, served one (1) year of the 3-year sentence.
2. The appellants did not challenge the conviction but pleaded for a reduction of sentence and stating, respectively, "that I am a first offender...the above emanated from bad company and the use of alcohol which I promise to shun" and "that I am a first offender and this crime herein just emanated from bad company of which I promise to discern completely and become a good citizen." Sic
3. DPP did not oppose the appeals subject to favourable Probation Officer's Report for non-custodial sentence for the remainder of the imprisonment term.
4. The Probation Officer's pre-sentence reports were, however, negative for both the appellants, the Probation Officer recommending for the respective appellant that:

"Given the negative sentiments from the complainant, the local administration and the neighbours, coupled with the scanty information over the appellant's place of abode, it is my opinion his supervision in the community may not succeed and therefore his case may be dealt with otherwise."

Review of the sentence by the trial Court

5. I have considered the sentence by the trial Court, and in view of the value of the items stolen worth Ksh.45,000/= I do not find that the sentence was in any way excessive. In addition, in view of their negative Probation Officer's Reports for non-custodial sentence, the appellants cannot benefit from the provisions of section 3 of the Community Service Order Act which require consideration of Community Service for offenders sentenced or being considered for 3 years imprisonment and below.

Orders

6. Accordingly, for the reasons set out above, the appellants' appeals herein are without merit, and each of them is dismissed.

Order accordingly.

DATED AND DELIVERED THIS 1ST DAY OF JULY 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellants in person.

Ms. Macharia, Ass. DPP for the Respondent