



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO.50 OF 2018

(Appeal Originating from Nyahururu CM's Court Cr.No.1938 of 2017 by: Hon. O. Momanyi- S.R.M.)

JACKSON NDERITU WANJAGUA.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

Jackson Nderitu Wanjagua was convicted by Hon. Momanyi Ocharo on his own plea of guilty on 5/4/2018 for the offence of *breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code*.

He was sentenced to serve four (4) years imprisonment.

Being aggrieved by both the conviction and sentence, he filed this appeal challenging both the conviction and sentence.

At the hearing of the appeal, however, the appellant abandoned the appeal on conviction and opted to proceed with the appeal on sentence.

He submitted that he pleaded guilty to the charge, was treated as a first offender, is remorseful; that he is aged 34 years and has a young family for which he is a breadwinner.

He also stated that he has been rehabilitated in prison, has learnt carpentry and has undergone programmes that will assist him know how to live at peace in the community.

Ms. Rugut opposed the appeal and stated that the appellant was liable to 7 years imprisonment under the Section 306(c) Penal Code, which he was charged but was only handed 4 years imprisonment; that the court noted that he was not remorseful and therefore the court should not interfere with the sentence.

I have considered the submissions. The prosecution treated the appellant as a first offender. He pleaded guilty to the offence and therefore saved the court's precious time of hearing witnesses and writing a judgment. Although the trial court observed that he did not seem to be remorseful, the appellant asked for forgiveness and stated that he was drunk. He claims to have been rehabilitated by the programmes in prison and has now got a trade of his own in carpentry. He also claims to have a young family for which he cares. He is a young man of 34 years. He was sentenced to prison on 5/4/2018. So far, he has served about one year, nine months.

The court will therefore, call for a pre-sentence report to enquire whether he can benefit from CSO before he can be released back into society.

Mention on 18/12/2019.

Dated, Signed and Delivered at Nyahururu this 11th day of December, 2019.

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R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Rugut – prosecution counsel

Soi – court assistant