

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 50 OF 2015

CHARLES MOSE BIKERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. N. Kahara – RM dated 12th June, 2015 at the Principal Magistrate’s Court at Keroka in Criminal Case No. 405 of 2014)

JUDGMENT

1. This is an appeal against the sentence imposed on the appellant, CHARLES MOSE BIKERI who was charged and convicted of the offence of stealing from a locked room contrary to section 279(g) of the Penal Code (Chapter 63 of the Laws of Kenya). The particulars of the offence were that on the night of 15th – 16th April 2014, in Keroka Police Line in Masaba North District within Nyamira County, he stole cash Kshs. 50,000/=, a radio make Konchan, two bed covers all valued at Kshs. 51,000/= the property of Joseph Kiprop and in order to commit such offence opened a locked room with a key.

2. The appellant was sentenced to twelve years 10 months imprisonment after the trial magistrate took into account the fact that he had been in pre-trial custody for a period of 14 months. In effect, the appellant was given the maximum sentence under section 279 of the Penal Code.

3. It is an error of principle to sentence an accused to the maximum sentence upon commission of the first offence (see **Josephine Arrisol v. R [1957] EA 447**). It was not disputed that he was a first offender, the stolen properties were recovered and the appellant expressed remorse. In light of the circumstances, the sentence was harsh and excessive. I therefore allow the appeal and reduce the sentence to time served. The appellant is released unless otherwise lawfully held.

Dated and delivered at Kisii this 12th day of July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.