

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

(COMMITTING A FELONY)

CRIMINAL APPEAL NO. 84 OF 2017

(CORAM: R. E. ABURILI – J.)

STEPHEN OUMA NGWOWA.....PETITIONER

VERSUS

REPUBLICRESPONDENT

(Being an appeal against both the conviction and the sentence DATED 26.1.2017 in Criminal Case No. 171 of 2016 in Principal Magistrates Court Siaya Law Court before Hon T. M. Olando – S.R.M.)

JUDGMENT OF THE COURT

The Appellant herein Stephen Ouma Ngwowa was convicted of the offence of Breaking into a building and committing a felony contrary to Section 306 (a) of the Penal Code.

He pleaded not guilty and a trial proceeded in earnest. He was found guilty and sentenced to serve 2 years in prison. On 31.8.2012. He has now served nearly all the sentence with a remainder of 1 ½ months only inclusive of 1/3 period of remission. He does not wish to proceed with the appeal but prays for non-custodial sentence. The Prosecution is not opposed to the withdrawal of the appeal and is in favour of non-custodial sentence.

The Appellant says he is ready to live as a law abiding citizen of this County. I have considered the Application for withdrawal of the appeal. The same is merited and accordingly the appeal herein is hereby marked as withdrawn.

As the Appellant has nearly served the sentence of the 2 year prison sentence which is short and is remaining with about 1 ½ months thereof, in the spirit of prison decongestion, I hereby exercise my discretion and set aside the remainder of the prison sentence and substitute it with suspended sentence of the remainder of the sentence. The Appellant/Convict shall not commit any offence during the said period otherwise he shall be re-arrested and sent back to prison to serve the said suspended sentence.

Accordingly, the convict Stephen Ouma Ngwowa is hereby set at liberty to serve a non-custodial suspended sentence for the remainder period with immediate effect, unless otherwise lawfully held.

Orders accordingly.

Dated, Signed and Delivered at Siaya this 20th day of November, 2018.

R. E. ABURILI

JUDGE