



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO. 51 OF 2017

STEPHEN OJUMA IPARA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence in criminal case number 1125 of 2016 in the Principal Magistrate’s Court at Sirisia - L. Kiniale (SRM) on 25/04/2017)

JUDGMENT.

1. This is an appeal on sentence arising from the judgement of Hon. L. Kiniale in Sirisia Criminal Case No. 1125 of 2016 that was delivered on 25th April, 2017. The Appellant was found guilty of the offence of housebreaking contrary to **section 304(1)(b)** and stealing contrary to **section 279(b)** of the **Penal code**. He was convicted and sentenced to serve a term of 6 years imprisonment on both limbs of the charge.

2. Being dissatisfied with the sentence the appellant preferred an appeal to this court on grounds that the sentence was harsh and excessive and that he is remorseful. He urged that he has since changed and that being a first offender the sentence should be lowered to a favorable one. Further that he had reformed and had taken various courses while in prison which included carpentry, joinery and painting. He believed that this will change his life.

3. In her submissions learned State counsel Mrs. Njeru contended that the sentence of 6 years imprisonment was quite in order since the offence carries up to 7 years imprisonment. Further that the Appellant was not a first offender since he had earlier on been convicted and sentenced to 3 years in jail for a similar offence but that that sentence did not act as a deterrent since he had repeated the offence.

4. **Section 304(1) (b)** of the **Penal code** provides as follows:

“(1) Any person who-

(a) ...

(b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof, is guilty of the felony termed housebreaking and is liable to imprisonment for seven years.”

Section 279 (b) of the **Penal Code** on the other hand provides that:

“If the theft is committed under any of the circumstances following, that is to say-

(a) ...

(b) If the thing is stolen in a dwelling-house, and its value exceeds one hundred shillings, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

the offender is liable to imprisonment for fourteen years.”

5. On appeal the court will not normally interfere with the sentence imposed by a trial court, just because the appellate court would have given a different sentence in the circumstances. The Appellant in the instant case was found guilty on the above charges and was sentenced to serve **“imprisonment for 6 years on both limbs of the law.”** The first limb provides for a maximum sentence of 7 years imprisonment and the second limb provides for a maximum sentence of 14 years imprisonment.

6. I however observe that the manner of sentencing was vague. The court did not specify whether the Appellant was to serve a total of 6 years on the two limbs in total, or was to serve 6 years on each limb. Secondly it is not clear whether the sentences were to run concurrently or consecutively. In such circumstances where the court is silent on how the sentences should run the prison authorities would automatically apply the sentences consecutively, yet the proper sequence is that where the offences were part of the same transaction as herein and the house breaking was aimed at aiding in the theft from the house, the sentences should be pronounced to run concurrently.

7. Having carefully considered the grounds of appeal, the submissions of the Appellant and the response from the learned State counsel and having considered all the circumstances of this case I find no reason to interfere with the sentence except to clarify that the 6 (six) years sentence is made up of three years on each limb which shall run concurrently.

DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF OCTOBER 2018.

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L. A. ACHODE

HIGH COURT JUDGE

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUNGOMA THIS 20TH DAY OF NOVEMBER 2018.

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S. N. RIECHI

HIGH COURT JUDGE