



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 164 OF 2015

JACKSON GICHUKI MAINA....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. J. W. Gichimu – Principal Magistrate dated 8th July, 2014 in Nanyuki Chief Magistrate’s Court Criminal Case No. 896 of 2014)

JUDGMENT

1. **JACKSON GICHUKI MAINA** has appealed against sentence of 3½ years imprisonment for the offences of **Burglary contrary to section 304(2) of the Penal Code and stealing contrary to section 279(b) of the Penal Code**. The appellant was found guilty of both offences after trial. His appeal however is only against his sentence.

2. The prosecution evidence was that on 4th October 2014 at about 6 a.m. **Joyce Wanjiku (Joyce)** saw the appellant, who is her son, on roof top of her neighbour, the complainant. Joyce telephoned her neighbours who apprehended the appellant. When they apprehended him they found that he was in the process of removing the complainant’s gas cylinder through the roof top. The complainant when he was summoned to his house found missing his gas cooker, gas lamp and empty beer bottles. These items were never recovered.

3. The trial court in its considered judgment stated:-

“My finding is that the accused (appellant) person is the one who broke into the complainant’s home. He removed the gas cylinder and placed on the roof top but was arrested before he left the complainant’s home. The accused person is found guilty as charged and convicted under section 215 of the Criminal Procedure Code.”

4. The appellant’s appeal against his sentence was opposed by the Senior Principal Prosecution Counsel Mr. Tanui who submitted that the trial court’s sentence was lenient.

5. The appellant in support of his appeal against sentence stated that prison life had reformed him. He acknowledged that before he had been a troubled child. He also stated that in prison he had been trained and had achieved grade 3 in wood work.

6. The appellant faced two limbs in the charge, before the trial court. He faced the charge of burglary and the charge of stealing. He was however only sentenced to 3 ½ years. The offence of burglary attracts a maximum sentence of 10 years imprisonment. The offence of stealing attracts the maximum sentence

of 14 years imprisonment. It follows from the above consideration that the appellant's sentence of 3 ½ imprisonment was extremely lenient. On that basis his appeal fails.

7. The appellant's appeal is therefore dismissed. The trial court's sentence is upheld.

DATED AND DELIVERED THIS 25TH DAY OF JANUARY 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Jackson Gichuki Maina

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE