



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 19 OF 2016

JACKSON KIROBI APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

*(Being an appeal from the original conviction and sentence by Hon. T. Matheka – CHIEF
MAGISTRATE dated 2nd September, 2015 in Nanyuki Chief Magistrate’s Court Criminal Case No.
888 of 2015)*

JUDGMENT

1. **JACKSON KIROBI** was convicted before the Nanyuki Chief Magistrate’s Court on his own plea of guilt to the charge of **stealing in a dwelling house contrary to section 279(b) of the Penal Code**. The trial court sentence him to **three** years imprisonment.

2. The facts presented before the trial court by the prosecution were that the complainant and his wife left their home in the morning of 14th August 2015 to graze their animals. At 1 p.m. the complainant returned to their home to find that their house had been broken into and his cell phone and its charger had been stolen. Neighbours informed him that the appellant had been seen leaving his house. The appellant was later traced at Doldol area where on being arrested was found to have the said cell phone in his possession.

3. The trial court on convicting the appellant on his own plea of guilty requested on pre-sentencing probation report to be prepared. That report revealed that the appellant had been convicted in case file No. Nanyuki Criminal Case No. 461 of 2015 on a similar offence three months prior, for which he was serving a sentence of probation. That report also revealed that the area chief of the appellant’s home area was of the view that the appellant had developed “stealing behavior” and that he was a threat to the community.

4. The trial court considered that probation report before pronouncing the sentence and stated:-

“He (appellant) was placed on probation but never served the sentence hence though youthful, he is not a first offender and is beginning to behave like a serial burglar.”

5. The appellant by his submissions stated that he had served one year and two months of his 3 years sentence; that he has acquired skills in carpentry and joinery which would enable him to be self-reliant; and that he had obtained spiritual nourishment which had changed his character.

6. The principles to guide this court were set out in the holding of the case **REPUBLIC v JAGANI &**

ANOTHER (2001) KLR 590 as follows:-

“A court of Appeal will only interfere with the discretion of a trial court in sentencing where the sentence was imposed against legal principles, or when relevant factors were not considered or irrelevant and or extraneous matter considered or normally where the sentence is manifestly excessive in view of the circumstances of any case. Before the High Court reviews a sentence imposed by a trial court, it must be satisfied that there exists to a sufficient extent circumstances entitling it to vary the order of the court below.”

7. The maximum sentence of the offence of stealing contrary to section 279(b) of Cap 63 is 14 years. The appellant at the time of his conviction on his own plea of guilt had been convicted of a similar offence for which he was serving a sentence of probation. With the above in mind the sentence of the trial court: 3 years, was not excessive to attract interference of this court. Accordingly the **appellant’s appeal against sentence is 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 Kirobi

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE