



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 42 OF 2016

KHALIF HUSSEIN.....APPELLANT

versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. E. BETT – SENIOR RESIDENT MAGISTRATE dated 16th March, 2015 in Nanyuki Chief Magistrate’s Court Criminal Case No. 221 of 2015)

JUDGMENT

1. **KHALIF HUSSEIN** has appealed against his sentence of 4 years on his conviction before the Chief Magistrate’s Court Nanyuki on the charge of **breaking into a building and committing a felony contrary to section 306(a) of the Penal Code**. He pleaded guilty to the charge.
2. The facts were narrated by the prosecution before the trial court. Prosecution stated that on 13th March 2015 at about 3 a.m. the appellant was noticed by employees of a bar/lodging called Annex Bar, coming out of one of the lodging rooms. On being stopped the appellant was found to have in his possession a blanket belonging to the lodge, valued at Kshs.500. The employees confirmed from the lodge register that the appellant had not been booked into the lodge. The appellant was arrested and taken to Nanyuki Police Station.
3. The appellant confirmed the above fact to be correct.
4. In his submissions in support of his appeal appellant stated that he has received training in prison which will assist him to be self-reliant if he is released from custody.
5. The trial court in sentencing the appellant noted that he was a first time offender, his mitigation: that he was the sole bread winner of the family, the value of the blanket, and the gravity of the offence.
6. An offence under section 306(a) of the Penal Code attracts a maximum sentence of 7 years. The trial court sentenced the appellant to 4 years imprisonment. I am aware that an appellant court should not interfere with the discretion of the trial court on sentencing. This indeed was what was stated in the case **MACHARIA vs REPUBLIC (2003) KLR 115**, viz:-

“The court does not alter a sentence on the mere ground that if the member of the court had been trying the appellant, they might have passed a somewhat different sentence The court will also not ordinarily interfere with the discretion exercised by a trial judge unless as was held in James vs Republic (1950) EA 147. It is evidence that the judge has acted upon some

wrong principles or overlooked some material facts.”

7. In this court’s view the sentence of the trial court attracts interference of this court. The maximum sentence of the offence the appellant faced was 7 years. Considering the value of the blanket involved, Kshs.500, and the fact the appellant pleaded guilty, and that the appellant was a first time offender, the sentence of 4 years imprisonment which was more than half the maximum sentence of the offence; was harsh. In view of the above the appellant’s appeal succeeds.

8. The court hereby sets aside the trial court’s sentence and substitutes the sentence of the appellant to the period so far served. **The appellant shall be set free from custody unless he is otherwise lawfully held.**

DATED AND DELIVERED THIS 25TH DAY OF JANUARY 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Khalif Hussein.....

For the State:.....

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE