



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 39 OF 2016

KERUEYA LENTIYA.....APPELLANT

versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in

Nanyuki Chief Magistrate's Court Criminal Case No. 757 of 2014

by Hon. E.BETT Ag. Senior Resident Magistrate on 25th August 2014).

JUDGMENT

1. **KERUEYA LENTIYA** was convicted on his own plea of guilty before Nanyuki Chief Magistrate's court for the **offence of burglary Contrary to Section 304 (2) of the Penal Code Cap 63**. He was sentenced to imprisonment of five years. He has filed this appeal against that sentence.

2. The appellant has based his appeal on the grounds that he has acquired training, while in custody, and will therefore be self-reliant if released; that he is seeking the mercy of this court to allow his appeal; and that he is reformed and if released he will inform the members of the public that thieving is bad.

3. The appeal was opposed by the Senior Principal Prosecution Counsel, Mr. Tanui, on the ground that the maximum sentence under **Section 304 (2) of Cap 63** is ten years and that accordingly the five year sentence of the trial court was lenient.

4. The holding in the case **REPUBLIC-V-JAGANI&ANOTHER [2001]KLR** stated the correct principles to guide the court when considering an appeal against. The court in that case stated:

“A court on 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 matters considered or normally where the sentence is manifestly excessive in view of the circumstances of any case.”

5. The trial court was informed of the facts of the case after the appellant pleaded guilty. The court was informed by prosecution that the complainant left his residence on the night of 9th August, 2014 and proceeded to his night duties. On returning to his home the following morning he found his front door opened and his bag where he kept his personal items unzipped. On further scrutiny he found that his clothing and Samsung phone were missing. He went to Jua Kali Trading Center and while there he saw the appellant wearing his T shirt. The appellant on being confronted by the complainant and members of

the public was found with the complainant's Samsung phone in his pocket. On being arrested by the police and on a search being carried out at this home the complainant's trouser was recovered therein. The appellant confirmed that those facts were correct.

6. In mitigation before the trial court the appellant stated that he had four children who depended on him.

7. The trial court in sentencing took into account that the appellant was a first time offender, that he had a family dependent upon him: but the court noted that the offence was grave. On those considerations the court sentenced the appellant to five years imprisonment.

8. Bearing in mind the principles that should guide the court when considering an appeal against sentence this court does not find any basis to interfere with the trial court's sentence. The sentence was not either excessive or wrong in principle nor was it unjustified by law. The trial court did not improperly take into account any matters nor did it improperly ignore relevant matter.

9. In view of the above the appellant's **appeal against sentence is dismissed**. The trial courts sentence is upheld.

DATED AND DELIVERED THIS 25th DAY OF JANUARY 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Kerueya Lentiya

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE