



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 114 OF 2016

(CORAM: J.A. MAKAU – J.)

ALAN KAMAU MBUGUA.....APPELLANT

VS

REPUBLIC.....RESPONDENT

(From an Appeal against both the conviction and the sentence dated 05.09.2016 in Criminal Case No. 1005 of 2016 in Bondo Law Court before Hon. M. Obiero-PM)

JUDGMENT

1. The appellant **ALAN KAMAU MBUGUA** was charged with an offence of stealing in a dwelling house contrary to **Section 279(b) of the Penal Code**. The particulars of the charge are that on the **2nd day of September 2016** at about 0730hours at Kagilo sub-location, in Gem sub-county within Siaya County, jointly with another not before Court, stole two mobile phones; *Huawei Y330, ITEL 2080*, Cash of Kshs. 5,000/= all valued at Kshs. 10,700/=, the property of Bevalyne Anyango from the dwelling house of the said **BEVALYNE ANYANGO**.
2. After full trial the appellant was found guilty, convicted and sentenced to serve two (2) years in jail.
3. Aggrieved by the sentence the appellant in what he refers to as mitigation on appeal, stating as follows:
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 - (i) ***That the appellant was in a state of confusion hence pleaded guilty without knowing the consequences of the offence in question.***
 - (ii) ***That the appellant begged for leave of Honourable court to review his sentence in question and reduce the sentence due to his sickling nature.***
 - (iii) ***That the appellant is the sole breadwinner in a family that fully depends on him for social economic needs and his incarceration would be more threatening to their lives.***
 - (iv) ***That the appellant's sincere mitigation if considered would allow his deteriorating conditions be met since he uses herbal medication for his backache condition.***
4. The appellant prayed that the sentence imposed upon him be reduced.
5. The State submitted the sentence was lenient as the sentence provided for is 14 years.

6. Section 279(b) of the Penal Code under which the appellant was charged provides that on conviction, the offender is liable to imprisonment for a period of 14 years.

7. The facts of the case are:- that on 2nd day of September, 2016 at 7.30am, the complainant was at her home. She saw the accused person leaving the house of her son by the name Enos Otieno. She went to the house to ask him, who the accused person was. The son refused to tell her. Later, the complainant went to her house. She discovered that her phone make *Huawei Y330* valued at Kshs. 4,500/= was missing, she also discovered that her phone make *Itel 2080* was also missing. She discovered that Kshs. 5,000/= was also missing. She went to her son's house but she realized that her son and the accused had escaped. She went and made a report at Wagai Police Station. She then boarded a motorcycle. When she reached the bus stage, she found the accused person. Members of public assisted her and the accused was arrested. When they conducted a search, they recovered the two phones hidden under the accused person's underwear. The phones were produced in court; *Huawei Y330* as exhibit 1 and *Itel 2080* as exhibit 2. The accused was escorted to at Akala Police Station and later charged with this offence.

8. I have considered the circumstances surrounding the commission of the offence and that the stolen items were recovered but the cash of Kshs.5,000/= was not recovered. I have considered the mitigation in favour of the appellant.

9. The upshot is that the conviction is upheld, sentence set aside, sentence of 2years is substituted with 1year imprisonment to run from the date of conviction.

DATED AND SIGNED AT SIAYA THIS 2ND DAY OF MARCH 2017.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT THIS 2ND DAY OF MARCH 2017.

In the presence of:

Appellant in person: present

M/S Odumba: for State

Court Assistants:

1. George Ngayo
2. Patience B. Ochieng
3. Sarah Ooro

J.A. MAKAU

JUDGE