



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO. 93 OF 2016

SAITOTI LOITABO APPELLANT

Versus

REPUBLIC..... RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. A K GACHIE –Resident Magistrate dated 2nd November 2015 in Maralal Principal Magistrate Court Criminal Case No. 169 of 2015)

JUDGMENT

1. SAITOTI LOITABO was charged before Principal Magistrate’s Court Maralal with the Offence of Breaking into a building and committing a felony **Contrary to Section 306 (a) of the Penal** on the **main charge**, and in the **alternative charge** with the offence of handling stolen property **Contrary to Section 322 of the Penal Code**. After trial he was convicted on the alternative charge. He was sentenced to 7 years imprisonment after the court found that he was not a first time offender but that he had been previously convicted of a similar offence and was in that case sentenced to 12 months imprisonment.
2. He now presents this appeal against sentence. He presented his grounds of appeal in the form of mitigation.
3. The Principal Prosecution Counsel Mr Tanui opposed the appeal on sentence on the ground that the appellant had committed a similar offence previously.
4. The court while sitting as an appellant court does not alter a sentence on the ground it might have passed a different sentence to that passed by the trial: see **MACHARIA -V- REPUBLIC [2003] KLR 115**. **It is because of that principle and because the appellant had previously been convicted and sentenced for a similar offence that this court dismisses the appellant’s appeal against sentence.**

Dated and Delivered at Nanyuki this 7th JUNE 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: Saitoti Loitabo

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE