REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 117 OF 2015

KELVIN OTIENO .....APPELLANT

VERSUS

REPUBLIC ..... PROSECUTOR

(Appeal from the Conviction & Sentence of the Chief Magistrate's Court at Molo, Hon. H. M. Nyaga – Chief Magistrate delivered on the 22nd April, 2015 in CMCR Case No. 910 of 2015)

JUDGEMENT

The appellant **KELVIN OTIENO** has filed this appeal challenging his conviction and sentence by the learned Chief Magistrate sitting at the Molo Law Courts. The appellant had been arraigned before the lower court on 9/4/2015 facing a charge of **BURGLARY CONTRARY TO SECTION 304(2) and STEALING CONTRARY TO SECTION 279(b) OF THE PENAL CODE**. The particulars of the charge were that:-

> ***"On the night of 23rd day of March, 2015 at Total in Molo District within Nakuru County broke and entered the dwelling house of BERNARD NYAKUNDI KAFUU with the intent to steal therein and did steal from therein 2 T-shirts, mattress, 2 pairs of Safari Boots, 6kg Gas Cylinder, 4 wall nets and 4 cautions being of the value of Ksh 17,340/="***

In the alternative the appellant faced a charge of **HANDLING STOLEN PROPERTY CONTRARY TO SECTION 322(1)(2) OF THE PENAL CODE**.

At his initial appearance before the trial court the appellant pleaded **'Not Guilty'** to the charge. However, on second reflection the appellant applied to change his plea. The charges were read out to him a fresh and the appellant in response to Count No. 1 said:-

> ***"I admit the charge"***

The facts were then read out and the appellant retained his plea of **'Guilty'** indeed his words were

> ***"It is true I stole the items"***

I find that the trial court properly took and recorded the appellant's plea in line with the principles of plea-taking set out in the case of **ADAN Vs REPUBLIC [1973] E.A**. The appellant's plea was unequivocal. He clearly understood the charges and the record indicates that the court used Kiswahili which the

appellant fully understood. I find that the appellant's conviction was proper as it was based on his own plea of Guilty. I therefore confirm his conviction.

The appellant in his submissions during the appeal stated that he did not seek to challenge his conviction. He stated that he only wished to challenge his sentence which he termed as **'harsh and excessive'**. The appeal was opposed.

Following his conviction the trial court allowed the appellant an opportunity to mitigate. He was then sentenced to serve 4 years imprisonment on the first limb of the offence and 3 years on the 2nd limb. The sentences were to be served concurrently.

The court prosecutor indicated that the appellant was **not** a first offender. He had two previous convictions both of which were relevant. The appellant admitted his past records. I do agree with the learned trial magistrate that the appellant being a repeat offender merited a stiff sentence. The sentence imposed was lawful and in my view was appropriate. The maximum sentence for this offence is seven (7) years. The sentence imposed upon the appellant fell way below that maximum. I find no merit in this appeal. The sentence imposed on the appellant is hereby upheld and this appeal is dismissed in its entirety.

Dated in Nakuru this 2nd day of September, 2016.

Appellant in person

Mr Chigiti for DPP

Maureen Odero

Judge

2/9/2016