

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

HIGH COURT CRIMINAL APPEAL NO. 75 OF 2012

JOHN CHEMASIA KADIMA.....APPELLANT

VERSUS

REPUBLIC OF KENYA.....RESPONDENT

(AN APPEAL ARISING OUT OF THE SENTENCE OF M. MUNYEKENYE, SRM DELIVERED ON 24TH JULY 2012 IN BUSIA CRIMINAL CASE NO. 1405 OF 2011)

J U D G M E N T

1. John Chemasia Kadima (**The Appellant**) was convicted by The Subordinate Court on Seven (7) counts of Breaking into a Building and Committing a Felony contrary to Section 306 of The Penal Code and on one Count of Burglary and Stealing contrary to Section 304 (2) as read with Section 279(b) of The Penal Code. In respect to the latter conviction, the Appellant was sentenced to serve five (5) years imprisonment. While in respect to the other Counts, the Appellant was sentenced to serve three (3) years imprisonment on each Count. It was further ordered that the jail terms run concurrently. This Appeal is against sentence only.

2. The decision in **Wanjema vs Republic [1971] EA 494** makes this important holding:-

“An appellate court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case”.

3. A person who commits an offence of Breaking into Building and Committing a Felony under Section 306 of The Penal Code is liable to imprisonment for seven (7) years. An offence under Section 304(2) attracts maximum imprisonment for ten (10) years and that under Section 279(b) attracts maximum imprisonment for fourteen (14) years.

4. For the offences under Section 306, the Court imposed imprisonment for three (3) years and for the offence under Section 304(2) as read with Section 279(b) the Court imposed a jail term of five (5) years. All the jail terms were to run concurrently. The sentences imposed by the Sentencing Court were lawful. In addition, as the Accused person was a first offender, the Court did not impose the maximum sentences. If I heed the decision of **Wanjema** (supra) then I cannot interfere with the Sentencing Courts Discretion. The answer to this Appeal is that it lacks merit and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 5TH DAY OF MARCH 2015.

F. TUIYOTT

J U D G E

IN THE PRESENCE OF:

KADENYI.....COURT CLERK

PRESENT IN PERSON.....FOR THE APPELLANT

OWITI.....FOR THE RESPONDENT