



REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

APPELLATE SIDE

CRIMINAL APPEAL NO. 46 OF 2014

(From original conviction and sentence in criminal case no. 390 of 2014 of the Chief Magistrate's Court at Malindi before Hon. Y A Shikanda – Ag. SRM)

AMOS WANYAMAACCUSED

VERSUS

REPUBLICRESPONDENT

JUDGEMENT

The Appellant was charged with the offence of burglary contrary to Section 304(2) of the Penal Code. He faced a second count of stealing from a dwelling house contrary to Section 279 (b) of the Penal Code. The Appellant pleaded guilty to the charge and was sentenced to serve five years imprisonment for each count. The sentence is running concurrently.

The grounds of appeal are that the language used in court was not disclosed, Article 50(2) of the Constitution was contravened and that the sentence is harsh considering the fact that the Appellant is remorseful. During the hearing of the appeal, the appellant informed the court that he pleaded guilty and would like the court to reduce the sentence.

Mr. Nyongesa, State Counsel, opposed the appeal. Counsel submitted that the sentence is sufficient and is not excessive.

The record shows that the appellant pleaded guilty to the charge. Initially the appellant pleaded not guilty but later changed his plea. The facts of the case were that the Complainant Charles Mande Luginu locked his house on 11th July, 2014 at 6.30pm. He went out and returned in the morning only to find that his house had been broken into and his bicycle together with other assorted items stolen. He later saw his bicycle and radio at a mechanic's place and was told that it was the Appellant who had taken the items there. The Appellant was also at the garage and was arrested.

The Appellant does not dispute the facts and that he pleaded guilty. The value of the stolen items was given as Kshs. 14,150/-. Although the sentence is within the law, I do find that it was excessive in the circumstances. The Appellant is a first offender. I do set aside the five (5) year sentence and replace it with eighteen (18) months imprisonment from the date of conviction.

Delivered and dated at Malindi this **8th** day of **April, 2015**.

Said J. Chitembwe

JUDGE