



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT LODWAR

CRIMINAL APPEAL NO 11 OF 2015

(FORMERLY KITALE HIGH COURT CRIMINAL. APPEAL NO. 11 OF 2015)

EKADELI LOPURMOE APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Before Justice Stephen Riechi)

JUDGMENT

The appellant **Ekadeli Lopurmoe** was charged in the Subordinate court I. O. Odhiambo Resident Magistrate, with the offence of breaking into a building and committing a felony contrary to section 306 (a) of the penal code.

The particulars of the offence are that on the 11th day of March, 2014 at California market of Turkana Central sub-county within Turkana County jointly with others not before court broke and entered a building namely a shop of **Paul Kamoyo Achukule** and committed herein a felony namely theft of **50kg of sugar, 10 litres of cooking oil, 1 carton of milk, six dozen of Omo, 1 box panga soap, a bundle of matchboxes, 45kg of beans, all valued at Kshs.10,200/-** the property of Paul Lomoyo Achukule.

The appellant pleaded guilty to the charge and as convicted on his own plea of guilty and sentenced to six (6) years imprisonment.

Dissatisfied with the sentence the appellant filed petition of appeal which is not dated. The appellants main grounds of appeal which are basically mitigation are that he is married and has a wife and children who depend on him, that he is a first offender, that he is sickly and a custodial sentence will affect his life and then as a result of his conviction and sentence, people have raided his home and taken away his wealth and finally that he is remorseful.

In his oral submission in court the appellant urged the court to revise his sentence as he has family responsibility and siblings to take care of.

Mr. Gikuda prosecuting counsel for the respondent opposed the appeal. He submitted that the appellant pleaded guilty and was therefore properly convicted. The sentence passed by the magistrate was lawful as the offence attracts a maximum sentence of seven (7) years but appellant was sentenced to 6 years imprisonment.

Section 306 (a) of the penal code under which the appellant was charged provides

306 Any person who

(a) breaks and enters a school house, shop, warehouse, store, office, counting house, garage, pavilion, club, factory or workshop or any building belonging to a public body or any building or part of the building licences for the sale of intoxicating liquor or a building which is adjacent to a dwelling house occupied with it bar nor part of it or building used as a place of worship and commits a felony therein or

b) breaks out of the same having committed any felony thereon,

Is guilty of a felony and is liable to imprisonment for seven (7) years.

The appellant having been convicted on own plea of guilty was sentenced to six (6) years imprisonment. He considers this excessive and prays that the same be revised.

The grounds upon which the high court can interfere with the sentence of the subordinate court was stated in *Ogalo s/o Owuora – VS – Republic (1950) 21 EACA 270* thus

“ Before a court can interfere with the trial high court’s sentence, it must be satisfied either that the sentence imposed is manifestly excessive or that the trial judge in passing the sentence ignored to consider an important matter or circumstance which he ought to have considered or that the sentence was wrong in prejudice”.

The appellate court does not interfere with a lawful sentence imposed by high court or subordinate court on grounds based on mere sentiments then if it were sitting as a trial court it would have imposed a different sentence”

In the present appeal as indicated above the sentence for the offence appellant was charged with attracts a maximum of seven years imprisonment. The appellant was sentenced to 6 (six) years imprisonment. The sentence of 6 years is therefore not unlawful. The appellant gave his mitigation and the magistrate considered the same. I therefore do not find that the sentence was manifestly excessive or that the learned magistrate ignored to consider the appellant mitigations, or that the sentence was wrong in principle. Consequently I do not find any reason to interfere with the judgment and sentence of the learned trial magistrate. I find this appeal without merit and dismiss the same.

Dated at Lodwar this 6th day of October, 2015.

S RIECHI

JUDGE

Court – judgment read over and delivered in open court in the presence of appellant and M/s Kigehe for the state this 7th day of October, 2015

S RIECHI

JUDGE