



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL APPEAL NO.5 OF 2015**

**BETWEEN**

**CHARLES OMUTIMBA OMUSINDE .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Being an appeal from conviction and sentence of Hon. E. S. OLWANDE, Ag SPM dated  
10/06/2014 in Butere PM's Cr. Case No.229 of 2014)**

**J U D G M E N T**

1. The Appellant was charged in Count 1 with the offence of house breaking contrary to Section 304 and stealing contrary to Section 279 (b) of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence were that on the 9<sup>th</sup> day of April 2014 at Ikumira village Shirotisa sub location in Butere district within Kakamega County jointly with others not before Court broke and entered the building used as a dwelling house of ALFRED WANGA MUTENDE and stole one long trouser two shirts a pair of shoes, a pair of socks, ½ set of table clothes one mobile phone make motorolla National ID Card (9660766) and cash kshs.16,450/= all valued at kshs.20,000/= the property of the said ALFRED WANGA MUTENDE.
2. In the alternative the appellant was charged with the offence of handling stolen goods contrary to Section 322 (1) of the Penal Code. The particulars of the offence were that on the 24<sup>th</sup> May 2014 at Shitaa village Shirotisa sub location in Butere District within Kakamega County otherwise than in the course of stealing dishonestly retained National identity card No.9660766 bearing the names ALFRED WANGA MUTENDE knowing or having reason to believe it to be stolen goods the property of ALFRED WANGA MUTENDE. In Count II the appellant was charged with the offence of Burglary contrary to Section 304 (2) and stealing contrary to Section 279 (b) of the Penal Code particulars of which were that between the night of 10<sup>th</sup> and 11<sup>th</sup> May 2014 at Ikumira village Shirotisa sub location in Butere district within Kakamega County jointly with others not before Court, the appellant broke and entered the dwelling house of WILFRIDA MARTHA OLIARO with intent to steal therein and did steal from therein 5 plastic chairs one mattress, 3 blankets, 10 bedsheets, one lamp, one stove, one jiko, 4 sufurias, 2 boxes, one axe, 30kgs of maize, one radio and several photographs all valued at kshs.42,000/= the property of the said WILFRIDA MARTHA OLIARO.
3. In the alternative to count II, the appellant was charged with the offence of handling stolen goods contrary to Section 322 (1) (2) of the Penal Code particulars of which are that on the 24<sup>th</sup> day of May 2014 at Shitaa village, Shirotisa sub location in Butere district within Kakamega County otherwise than in the course of stealing, dishonestly retained two photographs knowing or having reason to believe them to be stolen goods the property of WILFRIDA MARTHA OLIARO.

4. Lastly in count III the appellant was charged with entering in a dwelling house with intent to commit a felony contrary to Section 305 (1) of the Penal Code. The particulars of the offence are that the appellant on the 24<sup>th</sup> day of May 2014 at Shitaa village Shirotsa sub location in Butere district within Kakamega County entered into the dwelling house of SELINE NANGABO NAMAI with intent to commit a felony namely stealing and did steal therein four (4) hand bags, 2 belts, one radio Sony and two exercise books all valued at kshs.1825/= the property of the said SELINE NANGABO NAMAI.
5. In the alternative to count III the appellant was charged with the offence of handling stolen goods contrary to Section 322 (1) (2) of the Penal Code. The particulars of the offence were that on the 24<sup>th</sup> day of May 2014 at Shitaa village Shirotsa sub location in Butere district within Kakamega County otherwise than in the course of stealing dishonestly retained 4 hand bags, 2 belts one radio make sony and two exercise books all valued at kshs.1825/= knowing the property of or having reasons to believe them to be stolen goods the property of Seline NANGABO WAMAI.
6. The appellant pleaded guilty to all the charges whereupon he was convicted on his own plea and sentenced for seven (7) years imprisonment. It is not clear from the record to whether the sentences were to run concurrently or consecutively.

### **The Appeal**

7. The appellant filed the appeal dated the 18<sup>th</sup> day of August 2014. The grounds of appeal are more of mitigation than complaints. The main issue that arises from the said grounds is that the appellant wants the sentence imposed by the trial Court reduced. Mr. Omwenga for the ODPP opposed the appeal and submitted that the sentence prescribed is fourteen (14) years in jail yet the learned trial Magistrate gave the appellant only seven (7) years which is half the period prescribed under the Law. He submitted that the sentence handed to the appellant is neither harsh nor unlawful. The appellant relied on his written submissions and still prayed that the sentence be reduced.

### **Determination**

8. This Court has set out the respective submissions by the appellant and the State. Under Section 348 of the Criminal Procedure Code, no appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate Court except to the extent or legality of the sentence.
9. The appellant was convicted on his own plea of guilty and was sentenced accordingly. The only question to be determined by this Court is the extent or legality of the sentence imposed by the trial Court. The appellant in his submissions contented that he pleaded guilty and he was remorseful of his deeds and would not repeat the same. He has in his submissions asked his Court to consider his mitigation.
10. The case against the appellant was based on those different counts which were necessitated by the fact that the complainants were different. For the offences in all the three counts, the appropriate sentence is 7 years imprisonment under the second limit of stealing because the value of the things stolen under the respective counts was more than one hundred shillings.
11. It is also to be noted that the trial Court did not say when entering the plea of guilty that the appellant was being convicted on all the three counts. It may be that the trial Court was overwhelmed with work, but it was important for the trial Court to record clearly on which counts the appellant had been convicted and the sentence imposed under each count.
12. The above comments notwithstanding, I am satisfied that the appellant was properly convicted on each of the three counts after he admitted the facts. In the circumstances I do not find any merit in the appellant's appeal. I however make the following finding: That the appellant is found guilty on his own plea on each of the three counts and is convicted accordingly. On count 1, he is sentenced to 7 years imprisonment each on the first limb and the second limb on each of the three counts. The sentences shall run concurrently.

### **Conclusion**

13. For the reasons stated above, I find no merit in the appellant's appeal on both conviction and sentence. The appeal is hereby dismissed in its entirety. Save for this Court's correction on the question of sentence, I confirm both conviction and sentence of the learned trial Court. Right of Appeal within 14 days from today.

14. Orders accordingly.

Judgment delivered, dated and signed in open Court at Kakamega this 2<sup>nd</sup> day of December 2015.

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Present in person - for Appellant

Mr. Omwenga (present) for Respondent

Mr. Okoit - Court Assistant