

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 11 OF 2014

STEPHEN MWALAGHOAPPELLANT

-VERSUS-

REPUBLIC..... RESPONDENT

JUDGMENT

1. Appellant was charged before the Principal Magistrate Court at Voi on the first count with the offence of House Breaking and Stealing Contrary to Section 304(1) (b) as read with Section 279(b) of the Penal Code. He was also charged with an alternative charge of the offence of handling stolen property contrary to Section 322 (1) (2) of the Penal Code. He was convicted on the first count and was sentenced to four (4) years imprisonment for the offence of breaking into a building and two (2) years imprisonment for the offence of stealing. Appellant being aggrieved of his conviction and sentence presented this appeal against both but at the hearing of his appeal he presented new grounds showing that his appeal was only against sentence. He stated in his written submission that he had converted into Christianity and further stated-

“... when ‘plea of not guilty’ was entered as per the stated charge; I lied, and the word of God is very clear; the liars (sic) would have no room in God’s Kingdom.”

2. Going by the principles set out in the case Trevelyan J in **WANJEMA –VS- R (1971)E.A 494** as follows-

“A sentence must in the end depend upon the facts of its own particular case 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 factors, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

3. I do not find that Appellant’s appeal against sentence has merit at all. Appellant did not show that the trial Court overlooked any material factor or that it acted on the wrong principle or that the sentence was manifestly excessive. Accordingly Appellant’s appeal is hereby dismissed.

Judgment by:-

MARY KASANGO

JUDGE

In the presence of:-

..... for Appellant

..... for Respondent

DATED and DELIVERED at VOI this 5TH day of NOVEMBER, 2014.

.....

JUDGE