



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

ERICK NJUGUNA KINYANJUI.....1ST APPELLANT

DUNCAN MUREITHI KIRINDI.....2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case Number 247 of 2009 in the Senior Principal Magistrate's Court at Limuru – Mrs. M. A. Murage (SPM) on 16/03/2009)

JUDGMENT

1. The two appellants, **Eric Njuguna** and **Duncan Muriithi** were convicted on two counts of breaking into a shop and stealing contrary to **Section 306(a)** of the **Penal Code** each.
2. Each was sentenced to four years imprisonment on count No. I and to five years imprisonment on count No. II. The sentences which were ordered to run consecutively commenced on 16th March 2009.
3. They each filed an appeal contesting both conviction and sentence on each count. At the hearing of their appeal on 3rd July 2012 each applied to treat the part of their appeal with regard to conviction on each count as abandoned, so that each would pursue only appeal on sentence on each count.
4. The first appellant prayed to this court to reduce the sentence on each count and in addition to order the sentences to run concurrently, although the offences were committed on different dates and against different complainants. He also submitted that this was his first conviction and that he was now rehabilitated, following his incarceration.
5. The second appellant also submitted that he was now rehabilitated and that at 27 years of age, he is a young single man who should be given a chance to put his life in order instead of wiling away his time in prison.
6. The state opposed the appeals urging that the two appellants were convicted on their own pleas of guilty. That it was the court's order that the sentences should run consecutively because the offences were committed on different dates, and places and against different complainants. Further that the sentences were lawful and should therefore be affirmed and the appeals dismissed.
7. Having perused the lower court record, and also considered the submissions of the two appellants, and the response from the learned state counsel, I have noted several issues. The pertinent ones are that, each of the two appellants pleaded guilty to each of the two counts on which they were convicted. This

indicates that they were willing to take responsibility for their actions.

8. I also note that the value of the goods stolen in the first count was Kshs.23,125/= while that of the goods in the second count was Kshs.28,500/=, and that most of the stolen goods were recovered.

9. The two appellants before me are young persons who appear to have a desire to change their lives and are asking for a chance to be allowed to reintegrate in the society.

10. Lastly, that the maximum sentence provided for under **Section 306(a)** of the **Penal Code**, under which the appellants were convicted on each count is 7 years imprisonment. The sum total of years therefore, awardable for imprisonment for the two counts would therefore be 14 years for each appellant. The appellants were sentenced to a total of 9 years each. In the foregoing circumstances, I find that the sentence imposed by the learned trial magistrate, although lawful, was harsh.

11. The sentences were not ordered to run concurrently because the offences were not committed as part of the same transaction. Each offence was committed on a different date, locus in quo, and against a different complainant.

12. In exercise of the powers conferred upon me by **Section 354(3)(ii) Criminal Procedure Code**, and for the reasons set out above, I revise the sentences imposed by the learned trial magistrate upon each of the appellants to the effect that each appellant will serve two (2) years and eight (8) months imprisonment in count I, and another two years and eight months imprisonment in count II. The sentences will run consecutively.

In sum therefore, each appellant will serve a total of five years and four months imprisonment, which will run from the date on which they were sentenced.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this 3rd day of **October 2012**.

L. A. ACHODE
JUDGE