

REPUBLIC OF KENYA

Etwale v Republic

High Court, at Mombasa

Wambilyangah J

March 4, 1992,

Wambilyangah J delivered the following Judgment.

The appellant was convicted and sentenced in 3 court files as follows:-

- (a) In criminal case No.151/89 where the charge was Burglary and stealing contra to six years imprisonment and two strokes on each limb The sentences were ordered to run concurrently.
- (b) In criminal case No. 152/89 the charge was office breaking and committing a felony contrary to section 306/(a) of the Penal Code and the sentenced was 4 years and 2 strokes.
- (c) In criminal case No. 153/89 the charge was Burglary and stealing contra s.s 304(2) and 279(b) of the Penal code and the sentence on each limb was 3½ years imprisonment and 2 strokes of the cane.

The sentences were to run concurrently. As the conviction in each case was recorded after an unequivocal plea of guilty no criticism can validly be made against it. With regard to the sentence, the fact that sentences in one file were not ordered to be served concurrently with those imposed in the other files, it meant that sentence each file was to be served separately i.e. consecutively. See s.37 of the Penal Code. The effect would be that the appellant would serve a total of 13½ years imprisonment and receive 10 strokes of corporal punishment. Under the same section 37 the court is empowered to order that sentences like these ones be served concurrently. When viewed objectively the sentences in CR. Case No.152 of 1989 can be said to be manifestly excessive as the value of the items stolen was relatively low. The sentence awarded by other courts for similar offence may be as low as one year's imprisonment and 1 stroke of cane. It is therefore my considered view that there were no good grounds for leaving the sentences to be served consecutively. Accordingly I make the following orders.

1. Corporal punishment in criminal case No.152 of 1989 is reduced to one stroke only; corporal punishment in criminal case No. 151 of 1989 and in CR. Case 153 of 1989 is similarly reduced to one (1) stroke on each limb of the charge (in each case).
2. The imprisonment term in criminal cases No.152 of 1989 and 153 of 1989 to run concurrently with the term (of six years) in CR. Case No.151 of 1989.

The ultimate result is that the appellant will serve a total of six years imprisonment with 5 strokes of cane. That is my order.