



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**

**Criminal Appeal 2 & 72 of 1995**

**CLEMENT WARURU NYAHURO .....**  
**APPELLANT**

**AND**

**REPUBLIC .....**  
**.....RESPONDENT**

**(Appeal from a judgment of the High Court of Kenya at Nakuru (Mr. D. M. Rimita) dated 6<sup>th</sup> June, 1994**

**IN**

**H. C. CR. A. NOS. 31 & 32 OF 1994)**

\*\*\*\*\*

**JUDGMENT OF THE COURT**

These two appeals have been consolidated for convenient disposal.

The appellant was convinced on own plea of guilty on the offence of burglary and stealing contrary to sections 304(2) and 279(b) of the Penal Code and sentenced to a concurrent 3year's imprisonment on each limb and 12 strokes of the cane. This was in Criminal Case No. 241 of 1994 (Criminal Appeal No. 2 of 1995 herein).

It would appear that so soon thereafter the appellant was again arraigned before the same magistrate on a similar charge of burglary and stealing to which he pleaded guilty and was accordingly sentenced to 2 year's imprisonment on each limb. The jail term were ordered to be served concurrently. The appellant was also ordered to receive 8 strokes of the cane. This latter case was Criminal No. 242 of 1994 (Criminal appeal No. 72 of 1995 herein). The sentences imposed in the second case were ordered to be served consecutively with those already imposed in Criminal Case No. 241 of 1994. His appeals to the High Court of Kenya at Nakuru were summarily rejected under section 352(2) of the Criminal Procedure Code. Against that summary rejection the appellant has preferred these appeals to this court.

It is clear from perusal of the grounds of appeal before the High Court that they were not confined to the two matters under section 352 (2) of the Criminal Procedure Code under which an appeal may be summarily rejected. In our view, the High Court in its appellate jurisdiction erred in dealing with the

appellant's appeals by rejecting them summarily. The summary rejection was wrong. Accordingly we allow the appellant's appeals to this court and set aside the orders of the High Court summarily rejecting his appeals to that court.

Under section 3 (2) of the Appellate Jurisdiction Act (Cap 9 of the Laws of Kenya) we will dispose of these appeals once and for all.

As far as the pleas are concerned we are satisfied that they were unequivocal and must stand. We shall not therefore interfere with the convictions.

The practice where a person commits more than one offence at the same time in the same transaction is, save in very exceptional circumstances, to impose concurrent sentences. See REX V SAWEDI MUKASA S/O ABDUDDLA ALIGWAISA 13 E. A. C. A. 97. The offences on which the appellant was convicted were a series of offences committed within a space of a month or so and within the same locality. It was therefore preferable to impose concurrent sentences.

We direct that the prison terms shall be served concurrently and the number of strokes are reduced to one on each limb so that the appellant will serve a total sentence of 3 years' imprisonment and receive 4 strokes of the cane. To this limited extent only does this appeal succeed.

Dated and delivered at Nakuru this 28<sup>th</sup> day of September, 1995.

J. E. GICHERU

.....

JUDGE OF APPEAL

P. K. TUNOI

.....

JUDGE OF APPEAL

A. B. SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**