



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU

Criminal Appeal 72 of 1995

CLEMENT WARURU NYAHUROAPPELLANT

AND

REPUBLICRESPONDENT

**(Appeal from a judgment of the High Court of Kenya at Nakuru (Mr. D. M. Rimita)
dated 6th 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 convicted on 31st January, 1994 by the Nakuru Senior Resident Magistrate on his 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 3 years' 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 years' imprisonment on each limb. The jail terms were ordered to be served concurrently. The appellant was also ordered to receive 8 strokes of the cane. This latter case was Criminal Case 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 appeal 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 dealings with the appellant's appeals by 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 ABDULLA 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 now serve a total sentence of 3 years' imprisonment and receive 4 strokes of the cane.

Dated and delivered at Nakuru this 28th day of September, 1995

J. E. GICHERU

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

I certify that this a true copy of the original.

DEPUTY REGISTRAR