

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARSEN**  
**CRIMINAL APPEAL NO.E051 OF 2025**

**FAIZ ATHMAN ABDULRAHMAN .....APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

*(Being an appeal from the original conviction and sentence by Hon.F.M. Mulama, Resident Magistrate, in Lamu PM`s Court Criminal Case No.E172 of 2025 delivered on 19/8/ 2025)*

**JUDGMENT**

1. The Appellant herein was convicted for the offence of burglary contrary to section 304(2) and stealing contrary 279(b) of the Penal Code. The particulars of the offence were that on 3<sup>rd</sup> August 2025 at unknown time at Sea-front area of Langoni location in Lamu central sub county within Lamu County he broke and entered into a building used as stores of Abdunassir Bakari Shahidi with intent to steal and did steal from therein 120 kgs of dried fish (ngonda and papa) valued at Ksh.72,000/= the property of the above said Abdunassir Bakari Shahidi (herein referred to as the complainant).
2. The appellant pleaded guilty to the charge and was convicted on his own plea of guilty. He was sentenced to serve 10 years imprisonment. He was aggrieved by the sentence meted on him and filed the instant appeal. The grounds of appeal are that:
  1. That the 10 years sentence imposed upon the appellant was harsh and excessive.

2. That the appellant was a first offender hence deserved leniency.
  3. That the appellant pleaded guilty to the charge and apologized to the victim as an indication of an acknowledgement of wrong doing, hence deserved leniency.
  4. That the appellant separated with his wife who left four (4) children that he takes care of as well as supporting his aged ailing mother who entirely depend on him for their survival.
  5. That the appellant was ready for restitution to the victim for the loss caused but the trial court rejected his request.
  6. That the appellant has been a casual labourer of the victim for long and he regrets to have offended him. He apologized to the victim in court even the victim was also ready to forgive but the trial magistrate while giving out the sentence said that he convicted the appellant so as to serve as a lesson to other people with the same intention of committing such crimes.
  7. That the Appellant is remorseful and will not repeat committing any kind of offence if given a chance of being out of prison.
3. The appeal was canvassed by way of written submissions of the counsel for the Appellant. Counsel for Respondent did not tender in any submissions.

4. Counsel for the Appellant submitted that the Appellant was sentenced to the maximum sentence stipulated for the offence of burglary. That this failed to take into account the mitigation offered by the Appellant and the principle in criminal justice system that maximum sentences are reserved for the most serious and worst kind of offenders. That the Appellant having pleaded guilty at the earliest opportunity, being a first offender and having expressed remorse did not fall into this category.
5. It was submitted that the trial court disregarded the mitigating factors that the Appellant was aged 56 years, suffers from poor health and has dependents relying on him. That the trial court ought to have considered these mitigating factors so as to entitle the Appellant to the less severe sentence.
6. Counsel submitted that while the trial court acknowledged the mitigation, he failed to apply it meaningfully in rendering the sentence. That the mitigation was subsumed by irrelevant considerations of unverified suspicion contained in the pre-sentencing report that the Appellant was a drug addict which was something not supported by evidence nor a ground in law. That the consideration was prejudicial to the Appellant.
7. It was submitted that there were no aggravating factors to justify the imposition of the maximum sentence. That the sentence failed to meet the principle of proportionality in sentencing and failed to consider the

principles and objectives of sentencing thereby occasioning a travesty of justice to the Appellant. That the trial court ignored the principle that imprisonment sentence ought to be a measure of last resort. That in view of the foregoing the sentence was manifestly harsh and excessive given the circumstances of the case.

8. Counsel for the Appellant submitted that the trial court overemphasized deterrence at the expense of rehabilitation and restorative justice despite the Appellant`s suitability of non-custodial sentence in view of his mitigatory factors. Counsel relied on the case of **Kiboi & 4 others v Republic [2025] KEHC 6708 (KLR)**, citing *Makumbi v. Republic [2022]*, where the court relied on the Supreme Court of India`s decision in *State of M.P. v. Bablu Natt [(2012) SCC 648]*, where the court held that:

**Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of**

**the offence and all other attendant circumstances.**

9. Counsel for the Appellant urged the court to allow the appeal and substitute the sentence with an appropriate reduced or non-custodial sentence.

10. I have considered the grounds of appeal and the submissions tendered by the Appellant. It is in the first place to be understood that sentencing is a discretion of the trial court. The principles that an appellate court has to take into account in determining whether or not to interfere with the sentencing of the trial court were stated by the Court of Appeal in the case of **Wanjema vs Republic [1971] EA 493**, where it was held that:

**“The Appellate court should not interfere with the discretion which a trial court extended as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factors, acted on a wrong principle, or the sentence is manifestly excessive in the circumstances of the case.”**

11. The Appellant in this appeal was a first offender. He pleaded guilty to the charge thus saving the court of its precious time. He was sentenced to an omnibus sentence of 10 years where the charge carried 2 offences of burglary contrary to section 304(2) of the Penal Code and stealing contrary to section 279(b) of the Penal Code. The

law is that each of these offences required to attract a separate sentence.

12. The maximum sentence for the offence of burglary is 10 years imprisonment while that of stealing contrary to section 279(b) of the Penal Code is 14 years imprisonment. The appellant was therefore given the maximum sentence for the former offence. It is a principle in sentencing that the maximum sentence is reserved for the worst kind of offenders, see the Court of Appeal decision in **Charo Ngumbao Gugudu v Republic [2011] eKLR**.

13. The Appellant was a first offender. He mitigated that he had a mother who depended on him. The trial court in imposing such a stiff sentence seems to have been dissuaded by extraneous matters that were not proved that the Appellant was into drug use. I find the sentence imposed by the trial court to have been excessive and harsh. Accordingly, I set aside the said sentence and sentence the Appellant as follows:

1<sup>st</sup> limb for burglary - to serve 3 years imprisonment.

2<sup>nd</sup> limb for stealing - to serve 3 years imprisonment.

Sentence to run concurrently.

**Delivered, dated and signed at GARSEN this 28<sup>th</sup> day of April 2026**

**J. N. NJAGI**

## **JUDGE**

**In the presence of:**

**Miss Mkongo for Respondent**

**Appellant - present virtually at GK Prison Malindi**

Court Assistant - Mwero

Original