Case Number:	Criminal Appeal 162 of 2017
Date Delivered:	10 Mar 2022
Case Class:	Criminal
Court:	High Court at Nyahururu
Case Action:	Judgment
Judge:	Charles Mutungi Kariuki
Citation:	Stephen Raymond Mwangi v Republic [2022] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Criminal
History Magistrates:	-
County:	Laikipia
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

AT IN THE HIGHCOURT OF KENYA

AT NYAHURURU

CRIMINAL APPEAL NO. 162 OF 2017

STEPHEN RAYMOND MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Appellant herein alongside his co-accused were charged with several offences as follows:

2. Count I: **Breaking into a building and committing a felony** contrary to ***Section 306 (A) of the Penal Code***. The particulars were that Stephen Raymond Mwangi alias Aggrey Miheso Silingi and. Rebecca Muthoni Mutahi; On diverse dates between 25th and 26th day of May 2017 at Maina Village in Nyahururu within Laikipia County broke and entered a building namely an agrovet shop of Joseph Mwangi Njuguna and committed therein a felony namely theft and did steal from therein (as per attached list) all valued at Kshs.10,350/= the property of the said Joseph Mwangi Njuguna.

3. Count II: **Breaking into a building and committing a felony** contrary to ***Section 306 (A) of the Penal Code***. Particulars being that Stephen Raymond Mwangi alias Aggrey Miheso Silingi and Rebecca Muthoni Mutahi; On diverse dates between 25th and 26th day of May 2017 at Maina Village in Nyahururu within Laikipia County broke and entered a building shop of Margaret Cherotich Kabage and committed therein a felony namely theft and did steal from therein (as per attached list) all valued at Kshs 47,730/= the property of the said Margaret Cherotich Kabage.

4. Count III: **Having Suspected Stolen Property** contrary to ***Section 323 of the Penal Code***. Particulars being that Stephen Raymond Mwangi alias Aggrey Miheso Silingi and Rebecca Muthoni Mutahi; On the 26th day of May 2017 at Kirima village at Kirima village in Nyahururu within Laikipia County having been detained by No 88429 PC Jimmy Mwanzia and No 64343 CPL Paskwale Ireri as a result of the exercise of the powers conferred by section 226 of the criminal procedure code and in your possession (as per attached list) reasonably suspected to have been stolen all valued at Kshs.35,740/=.

5. The Appellant pleaded guilty to all the aforementioned counts and was convicted and was sentenced to 7 years for count 1 and 2 respectively and 12 months for count 3. The sentence to run concurrently.

6. The Appellant dissatisfied with the conviction and sentence, filed this appeal raising grounds that:

i. The Appellant was not warned of the consequences of pleading guilty as per the provisions of Article 50 of the Constitution of Kenya thus being a fatal omission on the court's part.

ii. The process was full of irregularities from the prosecutor and the trial court did note that.

iii. The sentences were illegal and contrary to Section 28(2) of the Penal Code.

iv. His co-accused is his wife and being parents to their children, they are suffering and he prayed the court to quash the sentence and put him on probation.

7. In making its determination, this court shall be guided by **Okeno v Republic (1972) EA 372** where it was stated that;

"The first appellate court must itself weigh conflicting evidence and draw its own conclusion (SHANTITLAL M RUWALA V R, [1957] EA 57). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower courts' findings and conclusions; it must make its own findings and draw its own conclusion only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witness."

8. Likewise, in **Kiilu & Another v Republic [2005]1 KLR 174,** the Court of Appeal stated thus:

"An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate Court's own decision on the evidence. The first appellate Court must itself weigh conflicting evidence and draw its own conclusions.

It is not the function of a first appellate Court merely to scrutinize the evidence to see if there was some evidence to support the lower Court's findings and conclusions; only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial Court has had the advantage of hearing and seeing the witnesses."

9. The Appellant herein was convicted on his own plea of guilty on all three counts. The Appellant contended that he was not warned on the consequences of pleading guilty. The importance of warning the accused person as to the consequences of pleading guilty was considered in the case of ***Elijah Njihia Wakianda v Republic [2016] eKLR*** where the Court of Appeal held that:

".....We also think that the elements of the offence are not complete if the sentence, especially if it is a severe and mandatory sentence, is not brought to the attention of the accused person. One surely ought to know the consequences of his virtual waiver of his trial rights that the Constitution guarantees him. That did not occur here and yet the appellant was unrepresented calling upon the trial court to be particularly solicitous of his welfare. The officer presiding is not to be a mere umpire aloofly observing the proceedings. He is the protector, guarantor and educator of the process ensuring that an unrepresented accused person is not lost at sea in the maze of the often- intimidating judicial process....."

10. Having carefully gone through the trial court's proceedings, it is my considered view that the trial court properly followed the principles to be applied during plea taking and warned the Appellant accordingly. I believe that the plea of guilty was unequivocal and the Appellant was warned by the trial learned magistrate that he was being charged with a felony. The trial court took extra effort to ensure that the Appellant was properly warned before entering the plea of guilty. Nevertheless, there is no legal requirement for the trial court to caution an accused person pleading guilty unless the charge carries a mandatory death or life sentence. Where the offence attracts a heavy penalty for example a long custodial sentence such as this case, it may advisable to caution the accused person. (See ***Ombena v Republic [1981] eKLR, Adan v Republic [1973] EA 445)***

11. Furthermore, I could not find evidence in the record indicating that the process was full of irregularities from the prosecutor and that the same was noted by the trial court. In any case, I did not find proof of any irregularities from the prosecution in discharging their duty.

12. In conclusion, the Appellant urged the court quash the custodial sentence in favour of probation. However, I am satisfied that the sentence meted out is not excessive in the circumstances and there is no error in principle to warrant the interference by this court with sentence of the trial court. Accordingly, the court makes the following orders:

i. The appeal is therefore dismissed, conviction is upheld and sentence confirmed.

DATED AND SIGNED AT NYAHURURU THIS 10TH DAY OF MARCH, 2022

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CHARLES KARIUKI

JUDGE