



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL REVISION NO. 170 OF 2020**

**(From original conviction and sentence in Criminal case No. 1412 of 2016 of the Chief Magistrate's court at Kitale)**

**PATRICK ONDERI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, **Patrick Onderi** was convicted of the offence of **Burglary** and **Stealing** contrary to **Section 304(2)** and **Section 279(b)** of the **Penal Code**. The trial court found as a fact that the Applicant had on the nights of **13<sup>th</sup>** and **14<sup>th</sup> March 2016** at Milimani area in Kitale township broke into the house of the Complainant and stole therefrom assorted electronic and household goods valued at Kshs 800,000/-. The Applicant was sentenced to serve three (3) years imprisonment on 9<sup>th</sup> October 2019. He has made an application to have the custodial sentence reduced.

The Applicant told the court that he regrets the decision that led him to commit the offence. He pleads with the court to forgive him. He asks to be given a second chance at life and be given the opportunity to take care of his family. He was their sole breadwinner. Mr Omooria for the State was not opposed to the court exercising its discretion appropriately as the circumstances may demand.

When the trial court sentenced the Applicant, it was exercising judicial discretion. This court cannot interfere with the exercise of such discretion unless it is established that the trial court either applied the wrong principle or failed to apply the correct Principle in sentencing the Applicant. This court can also interfere with the sentence if it is established that the sentence was either too harsh or too lenient as to attract the attention of this court. In the present application, the Applicant has not challenging the custodial sentence that was imposed upon him by the trial court but rather he is pleading with the court to consider his mitigation circumstances and the period that he has been in prison to arrive an appropriate decision in his favour. This court has considered the fact that the Applicant has been in prison for a period of nearly Twenty (20) months. The fact that he appears remorseful leads this court to the verdict that he has been sufficiently punished.

In the Premises therefore, the custodial sentence imposed on the Applicant is commuted to the period served. The Applicant shall be released from Prison forthwith and set at liberty unless otherwise lawfully held. It is so ordered.

**DATED AT KITALE THIS 23RD DAY OF JUNE, 2021.**

**L. KIMARU**

**JUDGE**