



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL APPEAL NO 1 OF 2018**

**FADHILI KATANA KALAMA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Appeal from original Sentence dated 02/01/2018 in Nanyuki CM***

***Criminal Case No 9 of 2018 – L Mutai, CM)***

**J U D G M E N T**

1. The Appellant herein, **FADHILI KATANA KALAMA**, was convicted upon his own plea of ***breaking into a building and stealing therefrom*** contrary **section 306(a)** of the ***Penal Code***. He stole various items in electronic office equipment and supplies valued at KShs 523,300/00. Most of the stolen items were recovered.
2. On 02/01/2018 the Appellant was sentenced to four (4) years imprisonment. He has appealed only against that sentence. I have considered his submissions and those of the learned counsel for the Respondent.
3. In his mitigation before the trial court the Appellant stated that he was aged 21 years and had been forced by circumstances to look for money to educate his siblings. He stated to this court that when he was arrested in December, 2017 he had just finished form 3 secondary. He pleaded that it is his desire to continue with his schooling when he is finally released from prison. He stated further that he was the first born in the family.
4. On his part learned counsel left the matter of sentence to court; but he pointed out that the offence carries a maximum of seven (7) years imprisonment.
5. The Appellant was a first offender who pleaded guilty. He was (and still is) a very young man. The trial court ought to have sought a probation report on him before sentencing; it did not.
6. I am satisfied that the sentence of 4 years imprisonment meted out to the Appellant was manifestly harsh and excessive in the circumstances of this case. This court is therefore entitled to interfere. The Appellant has been in prison now for about two years and one-and-a-half months. That has been sufficient punishment for his crime.
7. I will therefore allow this appeal against sentence by setting aside the term of four (4) years imprisonment and substituting therefor a sentence of two (2) years imprisonment from the date when he was sentenced by the trial court, 02/01/2018. That means that he has already served his sentence and shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 26<sup>TH</sup> DAY OF FEBRUARY 2020**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2020**