



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KABARNET**  
**CRIMINAL APPEAL NO. 48 OF 2019**

**YUKA SARICH....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original conviction and sentence of the Senior Principal Magistrate's Court at Kabarnet Criminal Case no. 615 of 2019 delivered on the 7<sup>th</sup> day of August, 2019 by by Hon. P.C. Biwott, SPM]**

**JUDGMENT**

1. The appellant who was on 7<sup>th</sup> August 2019 convicted on his own plea of guilty for the offences of housebreaking contrary to section 304 (1) (a) and stealing contrary to section 279 (g) of the Penal Code and sentenced to imprisonment for two (2) years on each limb of the charge running concurrently appealed against the sentence as urged a reduction of the sentence. The particulars of the charge were that:

**“Yuka Sarich. On 24<sup>th</sup> day of July 2019 at Kositet village, Kositet Location East Pokot Sub County within Baringo County broke and entered the building used as a dwelling house by Regina Sarich and stole a bed and Sonitec radio all valued at Ksh.7,000/- the property of the said Regina Sarich.”**

2. During the hearing of the appeal on 5/3/2020, the appellant indicated to the court that the complainant who is his sister wished to withdraw the complaint, which was the subject of the charges, in proceedings of the day recorded as follows:

**“5/3/20**

**Appellant**

The complaint is before the court and she wishes to withdraw the complaint.

**Ms. Muriu for DPP**

I do not object.

**PW1 Adult Female Christian sworn and states in Kiswahili:**

I am Regina Sarich, ID. 22502XXX.

I have come to court to forgive my brother. He is my step-brother. He broke into my residential house and stole a bed, mattress. Many of the items in the house had been stolen. I have forgiven him as my brother as from when he was jailed it has affected me. He has had his discipline. Our family agreed to pay Ksh.30,000/-. I agree to withdraw the charge. I believe I have that they shall pay. I did not seek to withdraw the case at the Magistrate's court because my other brothers were away and I could not resolve the issue. I do not have any other claim against the appellant.

**DPP**

I do not object to the application for reconciliation. The same had been communicated to me by the complainant.

### Appellant

I do not have anything to say.

### Court

Judgment on 13/3/2020.”

### Determination

3. In accordance with section 348 of the Criminal Procedure Code, the appellant who pleaded to the charge could only appeal from the **severity of sentence**. The appellant has **substantially served his sentence**, having been in custody serving his sentence 7<sup>th</sup> August 2019, a period of seven (7) months, almost half of the sixteen (16) months actual custody on a two year sentence with remission. The court also notes the **modest value** of the stolen household items which is shown on the charge sheet at a total of Ksh.7,000/- (although the complainant alleged a family agreed for payment of Ksh.30,000/- which may include interest and other recompense), which from the facts set out by the prosecution were **recovered** from the appellant’s house and his friend’s house.

4. The court considers that **the duty of court**, in appropriate cases such as the one before the court between relative in an offence of a personal nature and with approval of the DPP, to promote reconciliation among other methods of alternative dispute resolution under Article 159 (2) (c) of the Constitution is co-extensive with the full length of the criminal justice process from trial through to appeal.

5. As the appellant’s sister has reconciled with her brother and forgiven the appellant and withdrawn her complaint against him herein, I find the matter one suitable for review of the sentence, pursuant to section 354(3) (b) of the Criminal Procedure Code and reduce the sentence to imprisonment for the time already served so that the appellant is released from custody forthwith.

### Orders

6. Accordingly for the reasons set out above, while not altering the finding of guilty on own plea for the offences of housebreaking contrary to section 304 (1) (a) and stealing contrary to section 279 (g) of the Penal Code, the court reduces the sentence of imprisonment passed on the appellant to period already served so that he is released from custody forthwith.

7. There shall, therefore, be an order for the immediate release of the appellant from custody, unless he is otherwise lawfully held.

Order accordingly.

**DATED AND DELIVERED THIS 13<sup>TH</sup> DAY OF MARCH 2020.**

**EDWARD M. MURIITHI**

**JUDGE**

### Appearances:

Appellant in person.

Ms. Muriu, Prosecution Counsel for the Respondent.