

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CORAM: D. S. MAJANJA J.

CRIMINAL APPEAL NO. 64 OF 2019

BETWEEN

BONFACE ABUYABO ASHALI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence of Hon.C. Obulutsa, CM dated 26th August 2016 at the Magistrates Court at Eldoret in Criminal Case No. 4931 of 2016)

JUDGMENT

- 1. BONFACE ABUYABO ASHALI**, the appellant, was convicted of the offence of burglary and stealing contrary to **section 304 (2)** as read with **section 279 (b)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. He was sentenced to 5 years' imprisonment. Since he pleaded guilty, he appealed against sentence only.
2. I have considered the nature of the offence, the fact that the appellant pleaded guilty and was a first offender are factors that the trial Court ought to have taken into account. In my view, a sentence of 5 years' imprisonment was excessive.
3. In the circumstances and as the appellant has been in prison for the last three years, I quash the sentence of imprisonment and substitute it with one of term served. The appellant is set free unless otherwise lawfully held under a separate warrant.

DATED and DELIVERED at ELDORET this 26th day of APRIL 2019.

D.S. MAJANJA

JUDGE

Appellant in person.

Ms Kegehi, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.