



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL APPEAL NO. 39 OF 2019**

**ASCENT MUNUVE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(From the original conviction and sentence of Hon. J. Mwaniki (SPM) in Makueni Senior Principal Magistrate's Court Criminal Case No. 110 of 2015 delivered on 11/6/2018)*

**JUDGMENT**

1. **Ascent Munuve** the Appellant was charged and convicted of the offence of house breaking contrary to Section 304 (1)(b) and stealing contrary to Section 279 (b) of the Penal Code after a full hearing.

The particulars were that the Appellant on the 12<sup>th</sup> day of February 2015 at Kaumoni sub-location Kaumoni location in Makueni district of the Makueni county broke and entered a dwelling house of **James Muema Kyengo** with intent to steal from therein and did steal two radios, battery solar, two speakers, memory card, Nokia charger, ear phone and Kshs.3,500/= all valued at Kshs.30,000/= the property of **James Muema Kyengo**.

2. He was upon conviction sentenced to three (3) years imprisonment on each limb of the offence on **11<sup>th</sup> June 2018**. The sentences are to run concurrently. He filed his appeal soon thereafter. He later filed the following amended grounds of appeal.

- 1) **That** the learned trial magistrate did not consider the period served in remand while convicting him under as directed by Section 333(2) of the Criminal Procedure Code.
- 2) **That** he is fully rehabilitated through the prison fellowship programs and now an ambassador of Christ.
- 3) **That** since his imprisonment he has learned the value of patience and moral uprightness.
- 4) **That** he has gained a lot of skills in agriculture and carpentry thus able to work and depend on himself.
- 5) **That** prior to his arrest and subsequent conviction he was the sole bread winner of his family bestowed with a heavy responsibility of taking care of his two school going children.
- 6) **That** he prays for a non-custodial sentence or an option of a fine so as to take care of his innocent dependents who are tends who are to suffer untold calamities.

3. It is clear that from his amended grounds of appeal he is not contesting his conviction but the sentence only.

4. The evidence on record confirmed that the complainant's house was broken into. He testified as Pw1. The items mentioned in the charge sheet were found missing. Among them two speakers a battery charger and a small radio were recovered from the accused in Kitui. These were produced as EXB 2, 1 and 3 respectively.

5. I find that the conviction is safe and I uphold it. On sentence I have considered that some of the stolen items (whose value is not stated) were recovered. The total value of the stolen items was Kshs.30,000/=. The Appellant was first arraigned in court on 11/3/2015 and it was not until **11<sup>th</sup> June 2018** that his case was determined. I however note that the Appellant was not in remand custody for the entire period his case was being heard. He was on **7<sup>th</sup> May 2015** released on cash bail of Kshs.10,000/=. He only spent two months in remand custody.

6. The Appellant has served one (1) year and two (2) months of his sentence of three years and with remission considered he may have less

than a year to go.

7. I have considered all the circumstances of the offence, the two months spent in remand custody and the sentence already served. I am of the view that the Appellant even though a pastor has still to be monitored for some time.

8. I therefore confirm the sentence and order that for the remainder of the sentence he will be discharged under Section 35(1) Penal code on condition that he remains of good conduct for that period. If he commits any offence during that period, he will be arrested and returned to prison to serve that term.

This is clearly explained to him. Let the prison confirm to the Deputy Registrar the unserved portion of the sentence.

Orders accordingly.

**DELIVERED, SIGNED & DATED THIS 6<sup>TH</sup> DAY OF AUGUST, 2019, IN OPEN COURT AT MAKUENI.**

.....

**H. I. ONG'UDI**

**JUDGE**