



**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CRIMINAL APPEAL NO 120 OF 2014**

**(Appeal from original Conviction and Sentence in Kandara**

**PM Criminal Case No 213 of 2009 – E Boke, RM)**

**ELKANA MOSES MBURU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

1. The Appellant herein, **Elkana Moses Mburu**, was convicted of four (4) counts of **breaking and committing felonies** in the premises broken into contrary to **section 306(a)** of the **Penal Code**. He was sentenced to six (6) years imprisonment in each count, the sentences to run concurrently.
2. The Appellant was then already serving sentences in two previous cases – **Kandara PM Criminal Case No 455 of 2008** and **Kandara PM Criminal Case No 454 of 2008**. As there was no order that the new sentences do run concurrently with the sentences he was already serving, it meant under section 37 of the Penal Code, that the sentences would run consecutively with the previous sentences. He was thus going to spend a long time in jail.
3. The Appellant appealed against both conviction and sentence; however, at the hearing of this appeal, he abandoned his appeal against conviction and pursued only the appeal against sentence. His particular plea was that this court do direct that the sentences imposed upon him in the case giving rise to this appeal do run concurrently with the sentences imposed upon him in the two previous cases.
4. Learned prosecution counsel for the Respondent did not have any objection to that course of action.
5. It is only meet and just that the Appellant's sentence herein be reviewed as suggested by him; otherwise, he was going to spend an inordinately long time in jail.
6. It was for this reason therefore, that on 28/07/2017 I allowed the Appellant's appeal against sentence to the limited extent only, that the sentences of imprisonment for six (6) years in each of the four counts herein he stood convicted of on 14/04/2010, shall themselves run concurrently with the sentence the Appellant got in **Kandara PM Criminal Case No. 455 of 2008** (7 years imprisonment).

**DATED AND SIGNED AT MURANG'A THIS 19<sup>TH</sup> DAY APRIL 2018**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 20<sup>TH</sup> DAY OF APRIL 2018**