

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CRIMINAL APPEAL NO. 42 OF 2017

PETER ONGERI OMBAGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. N. Kahara – RM dated 3rd May 2017 at the Senior Resident Magistrate’s Court at Keroka in Criminal Case No. 364 of 2017)

JUDGMENT

1. The appellant, PETER ONGERI OMBAGA was charged and convicted of house breaking contrary to section 304 (1)(b) and stealing contrary to section 279(b) of the Penal Code (Chapter 63 of the Laws of Kenya). It was alleged that the appellant with his co-accused broke into the house of one JEMIMAH GESARE OTWORI on 6th March 2017 at Biticha Sub-location in Masaba North Sub County within Nyamira County and stole assorted household goods.
2. The appellant, as the 1st accused, pleaded guilty and was sentenced to serve four (4) years imprisonment on both limbs of the charge to run concurrently. His co-accused denied the charges but after the case was adjourned several times, the co-accused was discharged under section 204 of the Criminal Procedure Code (Chapter 75 of the Laws of Kenya) after the complaint withdrew the charges against him.
3. Considering that the co-accused was discharged after several adjournments and after the complaint decided to withdraw the charges, I hold that the sentence imposed on the accused harsh and excessive given that he pleaded guilty at the first opportunity and asked for leniency.
4. Considering the time the appellant has spent in prison, I sentence the appellant to time served. He is released unless otherwise lawfully held.

Dated and delivered at Kisii this 21st day of September 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.