



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 78 of 2015**

**PATRICK IRUNGU THUKU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The lower court file in Senior Principal Magistrate's at Githunguri Cr. Case No. 1438 of 2014 has been forwarded to this court with a view to the court satisfying itself as to the correctness, legality and regularity of the sentence passed. The application is brought pursuant to **Section 362 and 364 of the Criminal Procedure Code**.

The Applicant herein was charged with the offence of burglary contrary to **Section 304(2)** and Stealing contrary to **Section 279(b) of the Penal Code**. The particulars of the offence were that on the night of 20<sup>th</sup> November, 2014 at Kiaria Village in Githunguri District within Kiambu County, broke and entered into the dwelling house of Samuel Mwithikia with intent to steal therein and did steal from therein LG home theatre, Samsung TV 20", Samsung phone, 6 kgs meko gas cylinder, microwave and 13 kgs gas cylinder all valued at Kshs. 78,000/, the properties of the said Samuel Mwithikia.

In the alternative, he was charged with handling stolen goods contrary to **Section 322(1)(2) of the Penal Code** in that on the 20<sup>th</sup> day of December, 2014 at unknown time at Gathanje trading centre in Githunguri Sub-County within Kiambu Country, otherwise than in the course of stealing, dishonestly retained Samsung mobile phone worth Kshs. 5,300 knowing or having reason to believe it to be stolen goods.

The Applicant was convicted on his own plea of guilty in the main charge. He was sentenced to serve seven (7) years imprisonment. As at the date of hearing this application, the Applicant had served two years and six months of the jail term. His plea to this court is that the sentence be revised to a non-custodial one as he is the sole bread winner of a young family of two school going children and a house wife.

This court called for a Probation Officer's Report (P.O.R) which was presented to the court on 14<sup>th</sup> March, 2017. The same is favourable to the Applicant. It indicates that the Applicant may have slid into the criminal world due to bad company and a break-up of a marital union where he was splashed with money. Although he studied up to standard seven (7), since 2000, he lived with a High School teacher as husband and wife. The partner gave him a lot of money but the two broke up when she refused to sire children for him despite the fact that she had three children of her own. That is when he moved to Githunguri where until his arrest was doing menial jobs. He has a family of parents and siblings who are ready to receive him back and assist him in re-organizing himself.

In the above circumstances, more so taking into account that the Applicant is a first offender, I would prefer a non-custodial sentence. In the result, I set aside the custodial sentence. I substitute it with an order that the Applicant shall serve a probation term of 18 months. He shall report to Nakuru Sub-County Probation Office for this purpose. It is so ordered.

**DATED and DELIVERED in Nairobi this 21<sup>st</sup> day of March, 2017**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

- 1. Applicant in person.*
- 2. Miss Sigei for the Respondent.*