



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 35 OF 2016**

**MAURICE BAHATI OTUOMA..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in criminal case No. 809 of 2016 of the Chief Magistrate's Court at Busia by H.N Ndung'u (miss)– Chief Magistrate)*

**JUDGMENT**

The appellant, **MAURICE BAHATI OTUOMA**, was charged with an offence of entering into a dwelling house with intent to commit a felony contrary to section 305(1) of the Penal Code.

The particulars of the offence were that on 9<sup>th</sup> April 2016 at **EMWUKA** village, **MARACHI EAST** location of **BUSIA** County, he entered into the dwelling house of **PASILISA NYONGESA WERE** with intent to steal and did steal from therein a mobile phone valued at Kshs. 1500/= the property of the said **PASILISA NYONGESA WERE**.

He pleaded guilty to the offence. He was convicted and sentenced to four years imprisonment.

He now appeals against the sentence.

The state conceded the appeal through Mr. Owiti, the learned counsel.

The facts of the prosecution case were briefly as follows:

On 9<sup>th</sup> April 2016 at about 9.30 a.m the complainant returned to his home and found the appellant under the bed. She raised an alarm and the appellant was arrested and taken to the police. When he was searched, he was found in possession of the complainant's Nokia mobile phone. He was charged. He pleaded guilty to the offence. He was sentenced to four years imprisonment which he claims was harsh.

Section 305(1) of the Penal Code provides as follows:

***Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit a felony therein is guilty of a felony and is liable to imprisonment for five years.***

The appellant was sentenced to serve four years imprisonment. Prior to the sentence, the learned trial magistrate called for a pre-sentence report. The report was not favourable to the appellant. His family was very negative about him. The learned trial magistrate had considered him for a non-custodial sentence but for his standing with his family. Being a first offender however, the sentence was harsh. I accordingly reduce the sentence to two years imprisonment. His appeal on sentence therefore succeed.

**DELIVERED and SIGNED at BUSIA this 31<sup>st</sup> day of July, 2017**

**KIARIE WAWERU KIARIE**

**JUDGE**