

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

MIICSELLENEOUS CRIMINAL APPLICATION NO 12 OF 2017

THOMAS OTIENO OTIENO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant **THOMAS OTIENO OTIENO alias OGOGA** was convicted for the offence of burglary and stealing contrary to section 304 (2) as read with section 279 (b) of the Penal Code. He committed the offence on 24th December in **KOTHITHA** village and he stole items worth Kshs 28,000/- from the house of **BONIFACE NYAILA ACHIEN’G**. He pleaded guilty and was sentenced to serve 3 years for burglary and 4 years for stealing in **Homa Bay CM Criminal Case No 84 of 2015**. The sentences were to run concurrently.

2. He had been separately tried and convicted in **Homa Bay CM Criminal Case NO 85 of 2015 R v THOMAS OTIENO OTIENO alias OGOGA** for the offence of burglary and stealing on 3rd January 2015 at **KOMOLO** village, from the house of **JOHN ALEX GENGA** where he stole assorted household goods and clothes whose total value was given as Kshs522,500 where he was sentenced to serve 1 year. The matters were heard by two different magistrates, so none was aware of the other matter and upon conviction the court record does not reflect that it was made aware that he had a previous conviction. He has urged the court to direct that the sentences in the two matters run concurrently, which request was not opposed by **MR OLUOCH** on behalf of the **DPP**. I do not think the request is unreasonable and I allow it. This means the sentence in CRC No 84 of 2015 and CRC No 85 of 2015 shall run concurrently. His prayer is thus allowed.

Delivered and dated this 17th day of August 2017 at Homa Bay

H. A. OMONDI

JUDGE