



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION NO. 28 OF 2015

REPUBLIC

VERSUS

MWANIKI KATIWA APPLICANT

RULING ON REVISION

1. The Applicant, **Mwaniki Katiwa** has made an application under **section 362** and **364** of the **Criminal Procedure Code** for the revision of the sentence of two (2) years herein.
2. The Applicant was charged with the offence of:-

Count I:- Breaking into a building and committing a felony contrary to **section 306 (a)** of the **Penal Code**.

The particulars of the offence were that “on the nights of 15th and 16th October, 2012 at unknown time, at **Kitungati Market, Kitungati Location in Kitui County** jointly (with others) broke and entered into a building namely Bar of **Joseph Muthoka** and stole from therein, 1 DVD machine make **LG**, 1 **Senator Keg** pump, 16 beers of **Guinness**, 1 **Fiesta** beer, 5 **Tana Brandy** spirits and 2 **Kenya Cane Smooth Cane** spirit all valued at Kshs.20,080/= the property of **Joseph Muthoka**.”

In the alternative the Applicant was charged with the offence of handing stolen goods contrary to **section 322 (2) Sub-section 2** of the **Penal Code**.

The particulars of the offence being that “on the 16th day of October, 2012 at about 3.45 a.m. at **Kangwa Trading Centre, Kitungati Location in Kitui County** otherwise than in the cause of stealing retained 1 DVD machine make **LG**, 1 **Senator Keg** pump, 15 beers of **Guinness**, 1 **Fiesta** beer, 5 **Tana Brandy Spirits** and 2 **Kenya Cane Smooth Cane Spirit** all valued at Kshs.19,960/= knowing or having reasons to believe them to be stolen goods the property of **Joseph Muthoka**.”

Count II:- Breaking into a building and committing a felony contrary to **section 306 (a)** of the **Penal Code**.

The particulars of the charge were that “on the nights of 15th and 16th October, 2012 at unknown time, at **Kitungati Market, Kitungati Location in Kitui County** jointly (with others) broke and entered into a building namely **Kinyozi of Wambua Munyao** and stole from therein, 1 DVD machine make **Royal Tech**, 6 mobile phones make **Nokia 1200, 1202** and 4 **Motorollas** make **C113** and **C115** all valued at Kshs.33,000/= the property of **Wambua Munyao**.”

In the alternative the Applicant was charged with the offence of handling stolen goods contrary to **section 322 (2) Sub-section 2** of the **Penal Code**.

The particulars of the offence being that “on the 16th day of October, 2012, at about 2.30 p.m., at **Kangwa Trading Centre, Kitungati Location** in **Kitui County** otherwise than in the cause of stealing retained 1 DVD machine make Royal Tech valued at Kshs.6,000/= the property of **Wambua Munyao**.”

3. After a full trial, the Applicant was convicted for the offences in the main counts and sentenced to serve two (2) years imprisonment.
4. I have perused the lower court record. I have found no irregularities. **Section 306 (b)** of the **Penal Code** provides for a sentence of up to seven (7) years imprisonment. The sentence is therefore within the law.
5. The application has no merits and is dismissed.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 24th day of March 2015.

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JUDGE