



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 92 OF 2014**

**(From the Original Conviction and Sentence in Criminal Case No. 1253 of 2013 Chief Magistrate's Court Mombasa – Hon. Odenyo SPM)**

**ABDALLAH MWINYI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The appellant was convicted and sentenced to seven years imprisonment for the offence of preparation to commit a felony contrary to section 308 (1) of the Penal Code.

The particulars being that on the 22<sup>nd</sup> day of May 2013 at Makadara grounds Mombasa County, not being at his place of abode had with him a knife an article for use in connection with the commission of a felony, namely stealing.

The appellant pleaded guilty to the charges and was convicted on his plea. In his mitigation he told the court that he had a wife and three children and that he was suffering from tuber culosis. He was sentenced to seven years.

His appeal is on sentence only.

Section 308 (1) of the penal code provides for a senescent of not less than seven years and not more than 15 years.

It is noted that the appellant was sentenced to seven years imprisonment which is the minimum sentence. He had been charged with a second count for possession of canabis sativa, he also pleaded guilty for the second count and was convicted accordingly but he was discharged on that count.

The sentence cannot be said to be harsh or excessive as it's the minimum.

The appeal lacks merit and it's dismissed. The conviction and sentence is upheld.

Judgment delivered dated and signed this 23<sup>rd</sup> day of April 2015 in open court in the presence of:

Learned State Prosecutor Mr. Masila

Learned Counsel for the defence Mr. Were

Court administrator Mr. Musundi

**M. MUYA**

**JUDGE**