



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL APPEAL NO. 262 OF 2013**

**DARREN MBITHI KALUNDA ..... APPELLANT**

**VERSUS**

**REPUBLIC**

*(Being an appeal from the conviction and sentence of Hon. R. Rator Resident Magistrate delivered on 24/9/2012 in Makueni Principal Magistrate Criminal Case No. 365 of 2012)*

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*(Before Hon. B. Thurairaja J)*

**J U D G M E N T**

1. The Appellant, **Darren Mbithi Kalunda** was charged with House breaking contrary to **section 304 (1)** and stealing from a dwelling house contrary to **section 279 (b)** of the **Penal Code**.

The particulars of the offence were that on the 18<sup>th</sup> day of August 2012 at 5.30 p.m. at **Makueni High School, Unoa Sub-location, Wote Location** in **Makueni District** of the **Makueni County**, broke and entered in to a dwelling house of **Erustus Kimetu Musyoki** with intent to steal from therein and did steal there in one DVD Make GLD, a pair of brown shoes, 3 mobile phones, T.V. remote GLD and cash Kshs.10,000/= all valued at Kshs.20,000/= the property of **Erustus Kimetu Musyoki**.

2. The charge was read out to the Appellant and all the essential ingredients explained to him and he pleaded guilty in all the counts. The interpretation is reflected as **English, Kiswahili and Kikamba**. The facts were read out and the Appellant accepted the same as correct. The trial court followed all procedures of plea taking [See **Adan –vs- Republic 1973 EA 445**].
3. The record reflects that there was a court clerk in court. The Appellant participated in the trial and even mitigated. As held by the Court of Appeal in the case of **Said Hassan Nuno v Republic [2010] eKLR- Nyeri Criminal Appeal 322 of 2006:-**

**“We take judicial notice that one of the core duties of a court clerk is to offer interpretation services to accused or even to the court where it does not understand the language of the accused; or a witness to the case.”**

4. **Section 348** of the **Criminal Procedure Code** provides as follows:-

**“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”**

5. The Appellant was sentenced to seven (7) years imprisonment in the 1<sup>st</sup> limb and ten (10) years in the 2<sup>nd</sup> limb.
6. Although the sentence in each count is within the law, the same is harsh and excessive. Consequently, I am persuaded to reduce the same to the period already served.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 28<sup>th</sup> day of May 2014.**

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**B. THURANIRA JADEN**

**JUDGE**