



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO. 263 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. 368 of 2012)

(Before Hon. B. Thurairaja J)

J U D G M E N T

1. The Appellant, **Darren Mbithi Kalunda** was charged in count I 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 29th day of March 2012 at **Unoa village, Wote Location** of **Makueni District** of **Makueni County** broke and entered into a dwelling house of **Ziphorah Mwikali Muia** with intent to steal therein and did steal therein a phone make **Ideos**, a bag, one pair of men's shoes, DVD machine make Philips, woofer make **Digitek**, DVD/T.V screen make Sony, Digital camera, Sony cash Kshs.5,000, Nokia E65 and Blackberry phone all valued at Kshs.60,000/= the property of the said **Ziphorah Mwikali Muia**.

In count II the Appellant was charged with the offence of escape from lawful custody contrary to **section 123** as read with **section 36** of the **Penal Code**.

The particulars of the offence were that on the 18th day of April 2012 at **Makueni Police Station** in **Makueni District** within **Makueni County** being in lawful custody of **PC (W) Bahati** and **PC Maina** escaped from the said custody.

2. The charges were 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. In the 1st count the Appellant was sentenced to seven (7) years imprisonment in the 1st limb and ten (10) years in the 2nd limb. In the 2nd count the Appellant was sentenced to serve two (2) years imprisonment. Sentences were to run concurrently.

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 28th day of May 2014.

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B. THURANIRA JADEN

JUDGE