



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 130 OF 2012**

HEMED RONALD MWAMBURI .....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From original Conviction and Sentence in Criminal Case No. 1118 of 2009 of the Senior Resident Magistrate's Court at Kwale – Hon. Obura - SRM)*

**JUDGMENT**

**HEMED RONALD MWAMBURI** hereinafter referred to as the Appellant was Convicted and Sentenced to seven (7) years Imprisonment for the offence of house breaking and stealing contrary to Section 304 (1) (b) and 279 (b) of the Penal Code.

The particulars were that:-

***“On the 10th day of August, 2009 at unknown time at Karanja Estate, Kwale County he broke and entered the dwelling house of NISHUULI HAMADI with intent to steal and did steal therein 3 lessos, 6 ladies dresses, 2 vitenges, 1 Buibui cloth, 2 headscarfs, 2 passbooks all of the value of Ksh. 20,000/= the property of NISHUULI HAMADI”.***

The Appellants appeal is on Sentence only. It is noted that he was not a first offender as he had two previous Convictions of house breaking and stealing which were similar to the offence he had been convicted with. He had initially been placed on Community Service for six (6) months but this did not deter him from committing a similar offence.

In the present case he was Convicted and Sentenced to seven (7) years imprisonment on the first limb of the charge of house breaking and five (5) years imprisonment for the second limb of stealing contrary to section 279(b) of the Penal Code. Sentence was ordered to run concurrently.

In his mitigation the Appellant contends that he has reformed while in prison.

It is noted that in criminal case number 1114 of 2009 the Appellant was Sentenced to four (4) years imprisonment. That case emanated from the same facts as this one but from a different Complainant.

In Sentencing the Accused in the present case the learned trial magistrate did not bear this in mind when he Sentenced the appellant to serve the Sentences concurrently after completion of the current jail term.

In the present case I do not find any reason to disturb the Sentences of seven (7) years and five (5) years respectively on the 1st and 2nd limb which were ordered to run concurrently. The only disturbance will be the additional orders that the Sentence in the present case shall run concurrently with that in criminal case number 1114 of 2009.

The appeal succeeds to that extend only.

**Judgment delivered date ed and signed this 27th day of May, 2014.**

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**M. MUYA**

**JUDGE**

**27TH MAY, 2014**

**In the presence of:-**

Learned State Counsel Miss Mwaura

Appellant present in person

Court clerk Musundi