



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 212 OF 2012

BENJAMIN KIMEU MWAKAVI APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 130 of 2012 of the Principal Magistrate's Court at Voi – Hon. Nyakundi - PM)

JUDGMENT

The Appellant **BENJAMIN KIMEU MWAKAVI** was Convicted and Sentenced to five(5) years Imprisonment for the offence of House breaking and Stealing contrary to Section 304 (1) and 279(b) of the Penal Code.

The Accused pleaded guilty to the charges and he was Convicted on his own plea. He was treated a first offender and a probation report was ordered for before Sentencing. That probation report was found to be unfavourable and the appellant was Sentenced to five (5) years Imprisonment.

Being aggrieved by the Conviction and Sentence the appellant lodged this appeal. He has abandoned his grounds on Conviction and attacks the Sentence for being harsh and excessive.

The charge for house breaking and stealing carries a maximum Sentence of seven (7) years Imprisonment. It is noted that the Appellant pleaded guilty to the charge and saved the Court precious Judicial time. He was treated as a first offender. Some of the stolen goods being shoes were recovered.

I find the Sentence of five (5) years to have been harsh. It is accordingly reduced to two and a half (2 ½) years Imprisonment on the first limb and two (2) years Imprisonment on the 2nd limb. Sentence to run concurrently.

He will therefore effectively serve a Sentence of two and half (2 ½) years Imprisonment term from the time of Conviction.

To that extend only does his appeal succeed.

Judgment delivered dated and signed this **16th** day of **May, 2014**.

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M. MUYA

JUDGE

16TH MAY, 2014

In the presence of:-

Learned State Counsel Mr. Ayodo

The Appellant present

Court clerk Musundi