

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 76 OF 2007

KOMU MUTIA KITE APPELLANT

VERSUS

REPUBLIC

(Being an appeal from the sentence of Hon. Richard Odenyo (SRM) delivered on 12/04/2007 in Mwingi Senior Resident Magistrate's Court Criminal Case No. 403 of 2007)

(Before Hon. B. Thurania Jaden J)

J U D G M E N T

1. The Appellant, **Komu Mutia Kite**, was charged with the offence of shop breaking and stealing contrary to **section 306 (a)** of the **Penal Code**.

The particulars of the offence were that on the night of 25th day of March 2007 and 26th day of March 2007 at **Mwingi Township, Mwingi Location** in **Mwingi District** within the **Eastern Province**, jointly broke and entered a building namely shop of one **Tabitha Morris Musyoka** with intent to steal and did steal from therein goods worth Kshs.35,000/=.

2. The Appellant pleaded guilty to the offence and was sentenced to six (6) years imprisonment.
3. The Appellant was aggrieved by both the conviction and sentence and appealed to this court on sentence only. The Appellant stated that the sentence was harsh and implored the court to reduce the same to the period already served.
4. I have taken into account the value of the goods stolen. The trial court's record shows that the Appellant was being treated as a first offender. Clearly the sentence of six years was harsh and excessive. The trial court ought to have called for a pre-sentence report to consider whether the Appellant was suitable for non-custodial sentence. The Appellant has already almost served the entire sentence. I reduce the sentence to the period already served.

.....

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 31st day of July 2014.

.....

B. THURANIRA JADEN

JUDGE