



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Criminal Revision 2 of 2013**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**DALMAS TUWOUT ..... ACCUSED**

**RULING**

The file was referred for revision by the trial Magistrate Kabarnet in Criminal Case No. 698 of 2012.

Before the Magistrate, the accused (subject) was charged with four counts as follows:

**Count I and Count II:**

House breaking contrary to Section 304 (1) and stealing contrary to Section 279 (b) of the Penal Code.

**Count III:**

Escape from lawful custody contrary to Section 123 of the Penal Code.

**Count IV:**

Stealing contrary to Section 275 of the Penal Code.

Plea was taken on 7th December, 2012 and the accused (subject) pleaded guilty to Counts 3 and 4. On 11th December, 2012 he was taken to court for hearing of evidence of Counts 1 and 2. In Counts 3 and 4, he was sentenced to serve 18 months and one (1) year imprisonment respectively.

During the hearing, court realized the accused (subject) was under age, and a subsequent age assessment revealed that he was fourteen (14) years old.

In effect, the sentence handed to the subject is illegal. The same (with respect to Counts 3 and 4) is set aside. The conviction is equally quashed. Evidence cannot be heard piece meal in respect of the two pending counts. As such all proceedings in respect of this trial against the subject are expunged (set aside) from record.

The subject shall accordingly take plea afresh and pending the taking of the plea shall be remanded in a Children Remand Home.

This order shall be served both on the trial court and the investigating officer for necessary action.

**DATED** and **DELIVERED** at **ELDORET** this 28th day of March, 2013.

**G. W. NGENYE – MACHARIA**

**JUDGE**