

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Criminal Case 10 of 2011

ALIFAN RAMADHAN.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

1. The appellant has appealed against the conviction and sentence handed down by the learned magistrate in Kilifi Criminal Case No. 49/2011.
2. The record of the Lower Court shows that the appellant pleaded guilty to a charge of Breaking into a Building and Committing a felony contrary to section 306(a) of the Penal Code.

His complaint that he was not given adequate time and facilities to prepare for plea appear misplaced. The record shows that he admitted the charge when it first was read out to him on 17-1-2011 and two days later admitted the facts given by the prosecutor in respect of the charge. He clearly understood the nature of the charge and even mitigated before sentence. A perusal of the proceedings shows that his plea of guilty was unequivocal **(see Adan vs Republic (1973)EA.445.**

3. In terms of Section 382 of the Criminal Procedure Code he can only contest the issue of sentence. On that score, I agree with him and the learned State Counsel that the sentence imposed was manifestly excessive considering the fact that no adverse antecedents were proved against him, such as a previous conviction. Secondly, a substantial part of the stolen goods, valued at kshs. 17,000/- were recovered.
4. In the circumstances, I am of the view the 14 years imprisonment sentence was excessive.

I set aside that sentence and instead impose a sentence of two years imprisonment to run from the date of sentencing.

Delivered and signed at Malindi this **13th June, 2012** in the presence of the accused, Mr. Otieno for him, Mr. Naulikha for the State, cc Evans.

C. W. MEOLI
JUDGE