



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**Criminal Appeal 265 of 2011**

*(From Original Conviction and Sentence in Criminal Case No. 874 of 2009 of the*

*Senior Resident Magistrate's Court at Voi: Nyakundi L.M. - R.M.)*

**MICHAEL**

**MZEE.....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The Appellant **MICHAEL MZEE** has appealed against his sentence imposed by the learned Resident Magistrate sitting at Voi Law Courts. The Appellant was brought to court on 30<sup>th</sup> September 2009 on a charge of Burglary and Stealing contrary to Section 304(1) and Section 279(b) of the Penal Code. At the end of the trial the Appellant was convicted and was sentenced to serve 7 years imprisonment on the first limb of the charge and two (2) years on the second limb. The trial magistrate further directed that the sentences be served concurrently. The Appellant appealed.

The Appellant who acted in person told the court that his appeal was against sentence **only** which he termed as harsh and excessive in the circumstances. **MR. TANUI** who appeared for the Respondent State conceded the appeal and indicated that he would leave the matter of sentence to the court. I have myself carefully considered the record of the trial before the lower court. I note that the accused was a first offender yet the trial court imposed the maximum sentence on both limbs of the charge. I therefore allow this appeal against sentence. I hereby set aside the 7 year term imposed by the trial court and substitute instead a sentence of three (3) years imprisonment on each limb of the charge. The terms of imprisonment shall run concurrently.

It is so ordered.

**Dated and Delivered in Mombasa this 27<sup>th</sup> day of July 2012.**

**M. ODERO**  
**JUDGE**

In the presence of:

Appellant in person

Mr. Gioche for State