



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL APPEAL NO.42 OF 2010**

**MOSES NGUNJIRI WAIRIMU.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**[An Appeal from original conviction and sentence in Nyahururu C.M.CR.C.NO.2479 OF 2009 by  
Hon C. K. Obara, Resident Magistrate, dated 12<sup>th</sup> January, 2010]**

**JUDGMENT**

The appellant, Moses Ngunjiri Wairimu, pleaded guilty to the charge of **house breaking and stealing** contrary to **section 304(l)** and **279(b)** of the **Penal Code**. Upon conviction, he was sentenced to seven years imprisonment on each limb of the charge which were to run concurrently.

He was aggrieved and has brought this appeal on the ground that the trial magistrate erred in convicting and sentencing him without due regard to his age. This prompted the court (Emukule, J) to order age assessment for the appellant. Indeed the learned trial magistrate had also made a similar order and the appellant was found at the time as it has now been found to be an adult i.e. over 18 years of age.

Although a plea of guilty is not a complete bar to bringing an appeal on any ground other than the extent or legality of the sentence, the appellant has based his appeal only on the ground that the sentence was harsh due to his under age. Having found that the appellant was an adult can the sentence still be viewed as harsh?

The offence of house breaking is punishable by imprisonment of seven (7) years while stealing is punished with imprisonment for a period of fourteen (14) years.

In view of the fact that the appellant has previous criminal record, the sentence was, in my view, not harsh or excessive.

For that reason, the appeal is dismissed.

**Dated, Delivered and Signed at Nakuru this 22<sup>nd</sup> day of February, 2011.**

**W. OUKO  
JUDGE**