



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 19 OF 2009**

*(From Original Conviction and Sentence in Criminal Case No.31 of 2009 of the Senior Resident Magistrate's Court at Kaloleni: W.F. Andayi – S.R.M.)*

**JUMA KOMBO JOHA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

The Appellant herein **JUMA KOMBO JOHA** was on 15<sup>th</sup> January 2009 arraigned before the learned Senior Resident Magistrate sitting at Kaloleni Law Courts on a charge of **STORE BREAKING AND STEALING CONTRARY TO SECTION 306(a) OF THE PENAL CODE**. The particulars of the charge were that:

***“On the 8<sup>th</sup> day of January 2009 at Mazeras shopping centre in Kaloleni District within Coast Province, jointly broke and entered a building namely a store and stole from therein assorted clothes and shows all valued at Kshs.150,000/- the property of SHADRACK NYAGA”***

The Appellant pleaded guilty to the charge. On 16<sup>th</sup> January 2009 the facts were read out to the Appellant in compliance with S. 207 of the Criminal Procedure Code. The Appellant maintained his plea of guilty saying:

***“Facts are correct”***

The learned trial magistrate then convicted the Appellant on his own plea of guilty and after listening to his mitigation sentenced the Appellant to six (6) years imprisonment.

I have carefully perused the record. The Appellant indicated at the outset that he wished to proceed in Kiswahili. The presence of a court clerk is proof enough that translation was taking place. The Appellant was given 24 hours to consider his plea. When he returned the next day the facts were read out and he maintained his plea of guilty. I have no doubt that the Appellant fully comprehended and indeed participated in the proceedings. His guilty plea was unequivocal and I do find it to have been properly recorded. I therefore confirm the Appellant's conviction for the offence of Store breaking and Theft.

The Appellant has also appealed against his six (6) year sentence. In view of the fact that the

Appellant pleaded guilty thus saving the court's time, some of the stolen items were recovered and the fact that the Appellant was a first offender, should have led the trial magistrate to consider an alternative sentence e.g. fine, probation or community service. In my view the 6 year sentence was harsh and excessive in the circumstances. Having been sentenced in January 2009 the Appellant has now spent just over two (2) years behind bars. In my view this is sufficient punishment and I have no doubt that the Appellant has seen the error of his ways. I set aside the 6 year term imposed by the trial court and substitute time already served. The appeal against sentence therefore succeeds. The Appellant is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated and Delivered in Mombasa this 7<sup>th</sup> day of April 2011.**

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