

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. 212 OF 2010

ALEX MUDUYA APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was charged with the offence of burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of the Penal Code. The particulars of the offence were that on 11th and 12th September 2009 in Serem Location of Vihiga District, the appellant jointly with others not before court broke into and entered into the dwelling house of Rose Amagove with the intent to steal therein and in fact did steal several electronic goods and cash all valued at KShs.37,500/= the property of the said Rose Amagove. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted of the charge and sentenced to serve three (3) years imprisonment. The appellant was aggrieved by his sentence and has appealed to this court.

In his petition of appeal, the appellant raised several grounds of appeal essentially pleading with the court to exercise leniency on him. The appellant stated that the sentence imposed upon him by the trial magistrate was harsh in the circumstances. He stated that he was a first offender. He told the court that he was remorseful and repentant. At the hearing of the appeal, the appellant reiterated the contents of his petition of appeal. He urged the court to allow his appeal. Mr. Limo for the State opposed the appeal. He submitted that the appellant was not a first offender and therefore the sentence was appropriate.

This court has carefully considered the facts of this appeal. It is clear that the appellant is not a first offender. He had previously been convicted for committing a similar offence. I agree with the State. The custodial sentence imposed by the trial magistrate was appropriate in the circumstances. The appeal of the appellant therefore lacks merit and is hereby dismissed. The conviction and sentence of the trial court is hereby confirmed. It is so ordered.

DATED AT KAKAMEGA THIS 19TH DAY OF MAY 2011

**L. KIMARU
J U D G E**