

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO. 213 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 two counts of burglary contrary to **section 304 (2)** and stealing contrary to **section 279 (b)** of the **Penal Code**. The particulars of the offences were that on the night of 21st and 22nd September 2009 at Serem Trading Centre in Vihiga District, the appellant together with others not before court, broke into and entered the dwelling houses of Stanley Cheruiot and Kenneth Mbaya with the intent to steal and in fact did steal various electronic and household goods from the said dwelling house as listed in the charge sheet, the properties whose value was equivalent to KShs.48,170/=. The appellant pleaded guilty to both counts and was sentenced to serve four (4) years imprisonment. The appellant was aggrieved by the sentence that was imposed on him and duly appealed against the said sentence to this court.

In his petition of appeal, the appellant essentially pleaded with the court to exercise leniency on him. He stated that he was misled by wrong company into committing the offence. He was of the view that the sentence that was imposed was too high in the circumstances. During the hearing of the appeal the appellant reiterated his plea for leniency. The State left the issue of sentence to the court. This court has carefully considered the said plea by the appellant. The sentence that was imposed by the trial court was lawful. However, taking into account that two of the appellants co-accused who were convicted after full trial were sentenced to serve a non-custodial sentence, it is only just that the appellant's sentence be accordingly reviewed. The appellant was sentenced to serve the custodial sentence on 7th of October 2009. He has served 19 months of the sentence. It is the view of this court that the appellant has been sufficiently punished. The period that the appellant has been in prison has made him reflect on the folly of his ways. It was apparent that the appellant has learnt his lesson.

In the premises therefore, his appeal is allowed as a consequence of which this court commutes the sentence of the appellant to the period already served. He is hence forth set at liberty unless otherwise lawfully held. It is so ordered.

DATED AT KAKAMEGA THIS 19TH DAY OF MAY 2011

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