



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**CRIMINAL CASE NO. 123 OF 2010**

REPUBLIC.....PROSECUTOR

-VERSUS-

JOHN KAMAU NGUGI.....ACCUSED PERSON

**JUDGMENT**

**JOHN KAMAU NGUGI**(the appellant) was convicted on a charge of breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code that on the 29<sup>th</sup> day of August 2010 at 0600hours at Mpeketoni Trading Centre in Lamu District within Lamu County, broke and entered into a building namely KWETU CLUB belonging to **MWANGI WACHIRA** and committed therein a felony namely stealing and did steal Kshs.26,880, money detection, kitchen knife, DSTV, multichoice receiver, one carton of Furaha spirits and mobile all totaling Kshs.47,880/-. He was also convicted on a charge of stealing a motor cycle contrary to section 278A Penal Code that on the same date and place at 0800hours at Mpeketoni New stage in Lamu District stole a motor cycle make BAJAJ BOXER registration number KMCH 359P valued @ Kshs.82,000/- the property of **MARTIN WAINAINA**.

He pleaded guilty to both charges and was convicted. The facts as narrated to the trial court were that on 29/06/10 at 8.30am, **PAUL MWANGI WACHIRA** proceeded to his premises at KWETU CLUB upon arrival, he found the main door locked but the padlock was missing – this was unusual. He opened the door to find out what had happened and realized the padlock and keys had been placed in the shelf in the counter. He interrogated his workers – appellant who was one of the workers was not present. Upon further checking, the said **PAUL MWANGI** discovered that a DSTV multi-choice receiver was missing plus a money detector machine, a carton of spirit and a mobile phone.

He made a report at Mpeketoni Police Station and as he was leaving, he met the 2<sup>nd</sup> complainant **MARTIN WAINAINA** who also complained that he had leased his motor cycle Registration KMCH 356P to the appellant for one hour, and several hours had expired without him turning up. Police circulated the motor cycle details to all police road blocks and stations.

In September 2010, police officers manning the road barrier at ISOE in TANA RIVER saw the accused riding the motor cycle, so they stopped him. The motor cycle had no registration number and upon searching the appellant they recovered the number plate of the stolen motorcycle. Complainant was called so he confirmed the motor cycle as his. Further investigations revealed that before appellant escaped, he had not surrendered Kshs.26300/- being sales for four days.

Appellant had also been paid Kshs.5000/- which he was required to submit to the 1<sup>st</sup> complainant but this was not done. Items which were recovered and produced as exhibit were the motor cycle, the motor

cycle`s number plate, a bag, Kshs.5200/-, money detector, DSTV receiver, a microphone, rubberstamps, one kitchen knife and a bag containing the appellant`s belongings. Appellant confirmed the facts as being correct and was thus convicted on his own plea.

The prosecution informed court that he was a first offender. Appellant`s mitigation was that he had just completed school the previous year and that he was misled by the devil. He was sentenced to serve 7 years on the 1<sup>st</sup> count and 3 years in the second count, to run concurrently. His appeal was on sentence saying he is the sole bread winner of his single widowed mother`s family and the sentence is manifestly harsh and excessive. He seeks for non deterrent sentence.

In his written submissions he says he is very remorseful and explains that what led him to commit the offence against the 1<sup>st</sup> complaint who was his employer, is that he had worked for him for a period of 24 months without pay. He says he has learnt his lesson and is willing to make a clear break with such negative conduct. The State wished to leave the issue of sentence to court. I have considered the nature of the offence, the value of the property involved, and the fact that most of the stolen items were recovered. The appellant expresses remorse. I think the sentence of seven years is rather harsh, and my considered view is that the period served is sufficient punishment and to that extent I interfere with the sentence by setting it aside and substituting it to the period already served. This means that appellant shall be set at liberty forthwith unless otherwise lawfully held.

**Delivered and dated this 26<sup>th</sup> day of July 2011**

**H A OMONDI  
JUDGE**