



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**HCCR.A. 4 OF 2011**

**ROBERT ESEMAI .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

***(From the judgment of E.H. KEAGO SRM in Busia Cr. Case no.1855/09)***

**J U D G E M E N T**

The appellant Robert Esemai was convicted on his own plea of guilty by Busia Principal Magistrate of the offence of breaking into a building and committing a felony contrary to Section 306 of the Penal Code. He was sentenced to four (4) years imprisonment.

In his petition, the appellant did not raise any issue on the conviction but only on sentence. He pleads for leniency saying that his mitigation was not considered by the trial court. The state opposed the appeal on grounds that the sentence was lawful.

The appellant was a first offender and the property stolen was valued at sh.1000/- The only stolen item a plastic container was recovered from the house of the appellant.

In mitigation the appellant said he has a family with three (3) children.

The maximum sentence under Section 306 (a) Penal Code is seven (7) years imprisonment. The sentence of four (4) years imprisonment was lawful. However, the appellant being a first offender and having raised mitigating factors ought to have been considered for an alternative sentence or at least a shorter prison term.

The appellant was convicted and sentenced on 24/11/09. He has now served two (2) years imprisonment which I consider adequate punishment for the offence.

I hereby reduce the four (4) years imprisonment sentence to two (2) years, since the 24<sup>th</sup> November when the appellant was convicted, the sentence has been fully served. I further order that the appellant be released from prison forthwith unless otherwise lawfully held.

**F.N. MUCHEMI  
J U D G E**

Judgement delivered and dated the 13th day of December 2011 in the presence of the appellant and the State Counsel Mr. Okeyo.

**F.N. MUCHEMI  
J U D G E**