



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 70 of 2009

SIMON KIBET.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

JUDGMENT

SIMON KIBET, the appellant was upon his own plea of guilty to a charge of burglary contrary to Section 304(2) of the Penal Code convicted and sentenced to three years imprisonment. He has appealed against that sentence.

Before imposing that sentence on the appellant the learned trial magistrate was minded of placing him on probation. The Probation Officer, however, did not recommend probation that on the ground that the appellant was a man of no fixed abode and chances of committing other offences were high.

I agree with Mr. Nyagaka for the appellant that there was no basis for the Probation Officer's said recommendation. The record has no report from him. It is therefore not clear how he found out that the appellant is a man of no fixed abode. He also did not say how he came to the conclusion that the appellant was likely to commit other offences. In the circumstances I have to reject his observations.

As the appellant has been incarcerated since 16th February 2009, I think he has been punished enough. In the circumstances I reduce his imprisonment to a term that will secure his immediate release. The appellant shall therefore be released forthwith unless otherwise lawfully held.

DATED and delivered this 26th day of January, 2010.

D. K. MARAGA
JUDGE.