REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 87 of 2009

OCHIENG DANIEL ABALA……..…….APPELLANT

VERSUS

REPUBLIC…….……..RESPONDENT

JUDGMENT

The appellant was charged with two counts of the offence of house breaking contrary to section 304(1) of the Penal Code and stealing contrary to section 279(b) of the Penal Code. He was convicted on his own plea of guilty and was sentenced to serve five *(5)* years on each count and the sentences to run concurrently. He has appealed to this court on six grounds.

Under the provisions of Section 348 of the Criminal Procedure Code (Cap 75 Laws of Kenya) no appeal is allowed where a person pleads guilty except to the extent or legality of the sentence. The offence of house breaking carries a sentence of seven (7) years and that of stealing contrary to section 279 (b) carries a sentence of fourteen (14) years. In this case the appellant was sentenced to serve a period of five (5) years on each count and the sentences to run concurrently. The sentences are in accordance with the law. However, the appellant did not use or threaten any violence as is envisaged by section 279(b) of the Penal Code. The items stolen were all recovered. The appellant has in mitigation pleaded that he had not been paid for a period of 4 months and was desperate to hold on to something of value to sell and buy some food. The appellant also pleads that he pleaded guilty because he had expected a non-custodial sentence.

Considering the offence committed the circumstance of the commission of that offence the appellant's plea for leniency, and considering the provisions of section 348 of the Criminal Procedure Code in exercise of the powers conferred upon this court by the provisions of Section 354(3)(ii) of the Criminal Procedure Code I would reduce the sentences on both counts to two (2) years. Both sentences to run concurrently, appeal is otherwise dismissed.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 26th day of February 2010

M. J. ANYARA EMUKULE

JUDGE