REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 350A of 2008

PETER KIARIE NDUNGU……..…...……………APPELLANT

VERSUS

REPUBLIC……………………………………..RESPONDENT

JUDGMENT

The appellant was convicted and sentenced to 5 years and 1 year imprisonment on his own plea of guilty for the offence of **house breaking and stealing** contrary to **section 304(1)** and **279(b)** of the **Penal Code.**

He has challenged both the sentence and conviction on the following grounds:

i) that the exhibits were not recovered from him

ii) that the prosecution evidence was contradictory

iii) that the appellant was not at the scene of the crime

iv) that the investigating officer did not testify

At the hearing of the appeal, the appellant abandoned these grounds only arguing that the sentence was harsh and excessive. Learned counsel for the respondent did not object to the application to reduce the sentence.

The sentence for the offence of **house breaking,** a felony, is punishable with a prison term of seven years while the offence of **stealing** under **section 279(b)** attracts a sentence of fourteen years.

It is the offence of **stealing from a dwelling house** under **section 279(b)** that attracts a stiffer penalty than that of **house breaking.**

The learned trial magistrate ought to have considered this in passing the sentence. Be that as it may, sentence is an exercise of judicial discretion which an appellate court cannot lightly interfere with. An appellate court will interfere with the sentences of the trial court only if the sentence is manifestly excessive or if it is unlawful. None of this can be said of the sentence of five years and one year, to run concurrently. The circumstances of the offence justified such a sentence.

The appeal is dismissed.

Dated, Signed and Delivered at Nakuru this 5th day of March, 2010.

W. OUKO

JUDGE