



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 289 OF 2009**

**EVANS MOKAYA MOTANYA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**EVANS MOKAYA MOTANYA**, the appellant, was upon his own plea of guilty to a charge of shop breaking and stealing contrary to **Sections 304(1)** and **279(b)** respectively of the **Penal Code** convicted and sentenced to 7 years imprisonment. He has appealed against that sentence.

In his submissions before me the appellant pleaded for leniency and the reduction of his sentence. He said he is an orphan who is taking care of his siblings. Mr. Nyakundi for the state observed that the sentence of 7 years imprisonment in the circumstances of this case cannot be said to be harsh but left the matter to me.

**Section 304(1)** of the **Penal Code** provides for the maximum sentence of 7 years imprisonment for the first limb of the offence while **Section 279(b)** of the **Penal Code** provides for a maximum sentence of 14 years imprisonment for the second limb of the offence. Mr. Nyakundi is therefore right in saying that the sentence of 7 years imprisonment is not harsh if he only had in mind the second limb of the offence. I note from the record, however, that the trial magistrate did not specify whether the 7 years imprisonment was for the breaking or stealing limb of the offence.

Having considered the appellant's plea in mitigation, and the value of the stolen goods as well as the fact that he has been incarcerated since 11<sup>th</sup> September 2009, I reduce his sentence to such a term as will secure his immediate release. The appellant shall therefore be released forthwith unless otherwise lawfully held.

**DATED and DELIVERED this 18<sup>th</sup> day of June, 2010.**

**D. K. MARAGA**  
**JUDGE.**