



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
Criminal Appeal 144 of 2008**

(From original conviction and in criminal case no.1014 of 2008 and sentence of the Senior Resident Magistrate Court at Kilifi Before PM Kiama RM)

FRANKLIN FURAHA GACHORY.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Franklin Furaha Gachory(the appellant) was convicted on a charge of entering in a dwelling house with intention to commit a felony contrary section 305(1) Penal Code. He pleaded guilty to the charge and was sentenced to serve 5 years imprisonment.

The particulars of the charge were that on 9th December 2008 at Kilifi Township within Kilifi District, the appellant entered into the dwelling house of Agnes Changawa with intent to commit a felony, namely theft and did steal Ksh.200/- silver coins form therein.

The facts were narrated that on the date and time in question, the complainant was in the hotel and sent her daughter to the appellant she found the house closed from inside – there was commotion in the house and she saw the appellant jump from the house through the roof. The appellant was arrested by members of the public. On searching the house complainant found that Kshs.200/- was missing and the same was recovered from the appellant.

Appellant confirmed the facts as being correct. He appealed only on sentence saying he was a first offender who had not been involved in any criminal activity and he was remorseful.

The State conceded the appeal saying in view of the amount of money involved, and the fact that it was all recovered, and then the 5 year sentence, (which is the maximum) was harsh. Miss Waigera for State had no objection to the sentence being reduced to the period already served. I concur totally with the sentiments expressed by the learned State Counsel.

The appeal on sentence is merited – the sentence of five years imprisonment is set aside as being harsh, and substituted with the period already served. Appellant shall therefore be set at liberty forthwith unless otherwise lawfully held.

Delivered and dated this 9th day of July 2010 at Malindi.

H A OMONDI

JUDGE