



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI**

Criminal Appeal 104 of 2009

(From original conviction and in Criminal Case No. 112 of 2009 sentence of the Senior Resident Magistrate's Court at Lamu Before Hon. A. R. Kithinji - SRM)

MOHAMED SAID AWADH.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

Mohamed Said Awadh (the appellant) was convicted on a charge of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the Penal code. The particulars being that on the 5th day of February 2009 at Langoni Location in Lamu District, within Coast Province jointly with others not before the court, broke and entered the dwelling house of Hussein Mohammed with intent to steal therein, and did steal two golden bangles, five golden earrings, one golden necklace, four copper rings, one gas cooker, one Nokia and cash Kshs. 35,000/- all total valued at Kshs. 88,800/- the property of Hussein Mohamed.

He pleaded guilty to the charge.

The facts as narrated to the trial court were that on 5th February 2009 at about 4.00am, the complainant was asleep in his house at Langoni area. He had securely locked the door when he heard footsteps near the door, and when he woke up, he found the door was open. He spotted a person in the house carrying items in his bag. He raised an alarm and started chasing the appellant. Members of the public went to his aid and apprehended the appellant who was found carrying a bag and a Panasonic radio. The complainant identified the radio as his. Inside the bag were the jewellery already referred to, the gas cooker, one Nokia phone and Kshs. 3000/-. All these items were produced as exhibit before the trial court.

Appellant confirmed the facts as correct and in mitigation said he was an orphan and would never repeat the act. Upon being convicted on his own plea, he was sentenced to serve 7 years on the first limb, and 5 years on the second limb – which sentences were to run concurrently.

The appeal is only on sentence and in his grounds of appeal he states that he is remorseful and was a first offender, so the sentence was harsh.

Miss Waigera opposed the appeal on sentence arguing that prosecution had indicated the offence was prevalent. In considering the sentence, I take into account that the stolen items were all recovered on the spot - so appellant did not even reap any benefit from his ill act. I take into consideration the value of the property involved. The maximum sentence for the first limb is 10 years, while the second limb carries a maximum of 14 years and weighing all the aforementioned factors, I think seven years is rather harsh and I therefore interfere with the sentence by setting it aside and substituting it with a three year sentence on each limb to run concurrently and to take effect from the date of conviction.

Delivered and dated this **6th July 2010** at Malindi.

H. A. Omondi
JUDGE