



**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL APPEAL NO.22 OF 2010**

*(From original WBY PM. Cr. No.321 of 2010)*

**ROBERT MUKHWANA TABU ::::::::::::::::::::::::::::::::::::::: APPELLANT**

**~VRS~**

**REPUBLIC ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**JUDGMENT**

The Appellant Robert Mukhwana Tabu was convicted by Webuye Resident Magistrate of the offence of housebreaking and stealing contrary to sections 304 (1) and 279 (b) of the Penal Code and sentenced to serve three (3) years on each limb. In this appeal against conviction and sentence, the Appellant relies on four (4) grounds:

- a) *That he was tortured by the police and forced to admit the charge;***
- b) *That the trial magistrate did not warn him of the dangers of pleading guilty;***
- c) *That he was not given time to mitigate;***
- d) *That the sentence of six (6) years for both limbs was harsh and manifestly excessive.***

The appeal was opposed by the state Mr. Ogoti State Counsel argued that there was no evidence of torture and that the sentence was reasonable save for the failure by the trial court to indicate that the sentence for both limbs run concurrently.

The charge was read to the Appellant in Kiswahili which language he understood. This is the same language he used in court to argue his appeal. He pleaded guilty to the charge and facts were read to him in the same language. The Appellant admitted the facts and was convicted. In his mitigation, the Appellant explained how he assisted the 1<sup>st</sup> accused to carry the stolen items and how they helped each other to break into the complainant's house and steal. The accused did not plead for leniency. He was given the chance to mitigate and said what he thought was appropriate in the circumstances. Since the accused communicated to the court in all aspects during plea, he had the opportunity to complain that he had been tortured in police custody. If the Appellant had a problem, the court would have observed and noted accordingly. If the Appellant had been tortured as he alleges, the court would have inquired about into the matter and taken the necessary action. The complaint of having been tortured appears to be an afterthought. The court had no duty to warn the accused of the dangers of pleading guilty. The duty of the court lies in taking an unequivocal plea which it did.

On the sentences of three (3) years imprisonment for each limb, I find them reasonable and deterrent in the circumstances. The maximum sentences under section 304 (1) and 279 (b) of the Penal Code are seven (7) and fourteen (14) years imprisonment respectively. The trial court failed to order that the sentences run concurrently. The two sentences ought to run concurrently and I hereby so order.

I find that this appeal had no merit and I dismiss it accordingly save for the additional order on

sentence.

**F. N. MUCHEMI**  
**JUDGE**

Judgment dated and delivered on the 25<sup>th</sup> day of October, 2010 in the presence of the Appellant and the State Counsel Mrs. Leting.

**F. N. MUCHEMI**  
**JUDGE**