



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

**Criminal Appeal 247 of 2007**

**PAUL KIPLANGAT ANDEVA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The appellant, Paul Kiplang'at Andeva was charged with the offence of Burglary and Stealing contrary to Sections 304 (2) and 279(b) of the Penal Code. The particulars of the charge as stated in the charge sheet were that on 1<sup>st</sup> July, 2007 at Eldama Ravine Township in Koibatek District of the Rift Valley Province, the appellant broke into and entered the dwelling house of Harison Gatheya with intent to steal and did steal therefrom a JVC Television set, valued at Kshs.9,000/= the property of the said Harrison Gatheya.

When the appellant was first arraigned in court on 24<sup>th</sup> September, 2007 he pleaded not guilty of the charge. However when the case came up for trial on 29<sup>th</sup> October, 2007, he pleaded guilty and was accordingly convicted. He admitted the facts as stated to him by the prosecution, which were that, on 1<sup>st</sup> July, 2007 at 9.30p.m., the complainant locked his house and left, returning at 10.30p.m., only to find the door broken and his television set missing. He reported the incident at Eldama Ravine Police Station after which investigations were lodged by the police.

On 17<sup>th</sup> September, 2007 information was received by the police that the appellant had been seen in the complainant's premises and also that he had a television set in his house. He was traced to his house and found in possession of the television. The complainant was called and he identified the television set as the one he had lost. The accused was then arrested and charged.

Before sentencing the appellant the court took note of the fact that the appellant had a previous conviction on a charge of causing grievous bodily harm in respect of which he had been sentenced to a fine (or 8 months imprisonment in default) barely two months prior to the burglary incident.

In mitigation, the appellant stated only that he was the only son in his family and prayed for leniency. He was however sentenced to two prison terms of 3½ years for each of the combined charges of burglary and stealing. He now appeals against the said sentence, praying for leniency, on the grounds that he has reformed while in prison and is ailing.

The State opposes the appeal and asks the court to uphold the sentence, which it considers to have been well deserved in the view of the appellant's previous conviction.

I have considered the submissions made herein and I am not persuaded of the merits of the appeal. Considering that the offence under Section 304(2) carries a sentence of 10 years imprisonment, while the prescribed sentence for stealing under Section 279(b) is 14 years imprisonment, I am of the view that the sentence imposed against the appellant herein was quite lenient. Save to correct the glaring anomaly in the sentencing by ordering that the two sentences of 3½ years do run concurrently, I am not otherwise inclined to interfere with the sentence.

Accordingly, the appeal herein is dismissed with an order that the two prison terms of 3½ years imposed by the trial court do run concurrently.

DATED, SIGNED and DELIVERED at NAKURU this 12<sup>th</sup> March, 2009.

**M. G. MUGO**

**JUDGE**