

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Appeal 69 of 2008

RAJAB HASSAN..... APPELLANT

-AND-

REPUBLIC..... RESPONDENT

(An appeal from the judgment of Senior Resident Magistrate Mr. D. O. Ogembo

dated 26th February, 2008 in Criminal Case No. 258 of 2009 at Kwale Law Courts)

JUDGMENT

The charge brought against the appellant was BURGLARY CONTRARY TO SECTION 304 AND STEALING CONTRARY TO SECTION 279 OF THE PENAL CODE. The particulars are set out in the charge sheet.

After the charged was read out to the accused, on 26th February, 2008 he said "It is true". And thereupon, a plea of guilty was entered. The prosecutor then set out the facts; and the accused said:

"Facts are correct".

The prosecutor went on to say: "They are both first offenders". The accused then made a statement in mitigation. The Court thus proceeded: "Mitigation of the accused noted"; and the Court proceeded to sentence – 3 years' imprisonment.

Just as learned counsel *Mr. Onseri* urges, the learned Magistrate did not do the formal judicial act of saying: "I find you guilty on your own plea, and accordingly convict you"; but he proceeded to sentence. Therefore, the sentence did not rest on a conviction, and it was irregular.

I note that sentence was pronounced on 26th February, 2008; and therefore, the appellant has been in jail for the last 1 ½ years.

I hereby nullify the conviction aforesaid, and order that the appellant shall forthwith be released from custody, unless otherwise lawfully held.

Orders accordingly.

DATED and DELIVERED at MOMBASA this 7th day of September, 2009.

J. B. OJWANG

JUDGE

7/9/09