



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

**Criminal Appeal 93 of 2005**

FRANCIS OWINYI MAKOKHA .....APPELLANT

V E R S U S

REPUBLIC .....RESPONDENT

**J U D G E M E N T**

The appellant was charged and convicted of one count of House breaking and stealing contrary to *section 304 (1)* and *279 (b)* of the Penal Code and one count of handling suspected stolen goods contrary to *section 322* of the Penal Code. He pleaded guilty and was sentenced to serve 4 years imprisonment.

The appellant relied on his grounds of Appeal and prayed that the sentence passed should not run consecutively as he was serving another sentence. Mr. Karuri, learned State Counsel did not oppose the appeal. He submitted that the facts did not disclose how the appellant was involved in the offence and that the conviction was not proper.

I have read the facts of the case whereby the complainant on 28<sup>th</sup> June, 2005 found his house padlock had been cut and some items stolen. This was at midday. He reported to the police and on 29<sup>th</sup> June, 2005 he was called the police station where he identified some of his stolen items. The facts do not mention that the accused was found in possession of the stolen items or state how the accused was arrested.

I do agree with the learned State Counsel that although the appellant pleaded guilty, no offence was disclosed. The appeal succeeds. The appellant shall be set at liberty unless otherwise lawfully held.

*Delivered, Dated and Signed at Kakamega this 22<sup>nd</sup> day of*

*October, .2009*

**SAID J. CHITEMBWE**  
**J U D G E**