



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA  
Criminal Appeal 85 of 2007**

**MOSES MWASAME SICHEI.....APPELLANT**

~VRS~

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant Moses Mwasame Sichei was charged and convicted of the offence of burglary contrary to section 304 (2) and stealing contrary too section 279 (b) of the Penal Code. He was sentenced to serve five and three (3) years imprisonment on each limb. He has now appealed in this court relying on the following grounds:

1. That I plead not guilty to the above appended charge.
2. That I am remorseful and beg for leniency over the offence and beg the Honourable court to consider that I spent two years and four months in custody before the case was determined.
3. That I a the sole bread winner of a family of three young children aged between seven and three years plus my aged parents.
4. That I wish to be present during the determination of this appeal.

There are no issues raised on the first ground regarding conviction. The accused simply states:

*“I did not plead guilty to the above appended charge.”*

There being no fault attributed to the court on conviction, I proceed on the premise that there is no appeal against conviction.

The second and third grounds of appeal are in respect of sentence. The Appellant pleads for leniency and states that he is remorseful thereby begging the court to consider that he spent two years and four (4) months in prison custody which period the court did not consider when sentencing him. He also states that he is sole breadwinner of the family with children aged between three and seven years.

The maximum sentence provided under section 304 (2) of the Penal code is seven (7) years imprisonment while in section 279 (b) of the same Act provides for a maximum sentence of fourteen (14) years. The accused gave his mitigation comprising of the factors comprised in his petition of appeal.

In sentencing the accused, the magistrate said:

*“However, owing to the high spate or burglaries and related offences in Bungoma Town, I am persuaded to give a custodial sentence to serve both as deterrent and retributive measure against other youths of accused’s ilk and the accused himself.”*

I appreciate that the magistrate was concerned about the prevalence of the offence in the area. He handed in five (5) years to the Appellant for burglary. The accused was arraigned in court on 25<sup>th</sup> November, 2004 and the case was disposed off on 25<sup>th</sup> November, 2007. By the time of the disposal, the accused had stayed in custody for two years and three months. The court was silent on this aspect of the time spent in custody. The five years imposed added the time of incarceration would add up to the maximum sentence of five years imprisonment. The accused was a first offender and this factor ought to have been considered.

The sentence imposed on the first limb was within the law and not excessive. As I have pointed out some important matters were not taken into consideration during sentencing. For this reason, I reduced the sentence on the first limb to three (3) years.

The sentence on the second limb is reasonable in the circumstances and I do not wish to interfere. The lower court correctly directed that the sentences run concurrently. The appeal therefore succeeds in part thereof.

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

*Dated, Delivered and Signed at Bungoma  
This 25th day of November, 2009 in the presence of the appellant and Mr. Onderi state counsel.*