

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 380 of 2007

PHILIP MUTHUI WAMBERE APPELLANT

Versus

REPUBLIC RESPONDENT

(Being an appeal from the Judgment of V. W. NDURURU – Ag Senior Resident Magistrate in the Senior Resident Magistrate’s Criminal Case No. 325 of 2007 at Mukurweini)

JUDGMENT

The appellant was charged before the lower court with ***store breaking and stealing*** contrary to ***Section 306(a)*** and ***Section 279(g)*** of the Penal Code. After trial the appellant was convicted as charged. The judgment of the court passed on 22nd November 2007 was that the appellant was to serve 5 years imprisonment in respect of the first limb and seven years imprisonment in respect of the second limb. The appellant filed this appeal against conviction and sentence. At the hearing of this appeal the appellant abandoned his grounds on appeal against conviction and proceeded with his appeal against sentence. The appeal against sentence was not opposed by the state. The sentence under Section 306 the maximum period is 7 years. Under Section 279 the maximum period is 14 years. The appellant was a first offender and in my view the sentence meted out to him was harsh and excessive in the circumstances. I do therefore hereby set aside the sentence of the lower court passed on 22nd November 2007 and instead I do hereby substitute the same and sentence the appellant to one and half years imprisonment on each limb and that sentence is to run concurrently from 22nd

November 2007.

DATED AND DELIVERED THIS 30TH DAY OF JULY 2008

MARY KASANGO

JUDGE