



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

**AT NYERI**

**Criminal Appeal 253 of 2007**

**JAMES MAINA NDUHIU ..... APPELLANT**

**Versus**

**REPUBLIC ..... RESPONDENT**

***(Being an appeal against the conviction and sentence by B. M. KIMEMIA, Resident Magistrate, in the Senior Resident Magistrate's Criminal Case No. 645 of 2007 at KARATINA)***

**JUDGMENT**

The appellant pleaded guilty in the lower court to two counts of ***Breaking into a building and stealing*** and to one count of ***burglary***. The facts that were given by the prosecution were that on the night of 15<sup>th</sup>/16<sup>th</sup> July 2007 at Kaiyaba Trading Centre the appellant with others broke into two shops and stole items of property. A report was made and on investigation being commenced the appellant was found in possession of a pair of shoes belonging to one of the complainant together with other items of property. The appellant confirmed the facts to be correct. The court sentenced the appellant in respect of count 1 and 2 to kshs. 5,000 on each count and in default to serve a term of imprisonment for two years on each count. In respect of count 3 the appellant was sentenced to three years imprisonment. All sentences were to run consecutively. The appellant was said to be a first offender and in mitigation he stated that he was taking care of young children who did not have their mother. In submissions before this court he repeated those mitigations. I have reconsidered the sentence meted out by the lower court. The maximum sentence on all counts is seven years. The effect of the sentence of the lower court was that the appellant would serve seven years in total. That sentence is harsh and excessive and I do hereby set aside that sentence and instead I do hereby sentence the appellant in respect of count 1 and 2 to a fine of kshs. 5,000 and in default two years imprisonment on each count. In respect of count 3 I do sentence the appellant to a fine of kshs. 7,000 and in default to serve 2 ½ years imprisonment. Those sentences of this court shall run concurrently and will begin to run from 12<sup>th</sup> July 2007.

***DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF JULY 2008***

**MARY KASANGO**

**JUDGE**