



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

**Criminal Appeal 283 of 2006**

**BATHSEBA MORAA AMIN ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From the original conviction and sentence in the Senior Resident**

**Magistrate's Court at Ogembo, Criminal Case No.1895 of 2006 by**

**HON. J. D. KWENA, S.R.M)**

**JUDGMENT**

The appellant was charged with burglary and stealing contrary to **section 304(2)** and **Section 279(b)** of the **Penal Code**. The particulars of the offence were that on the night of 10<sup>th</sup> and 11<sup>th</sup> 2006 at Keragia sub-location in Gucha District within Nyanza Province the appellant broke and entered the dwelling house of **Edwin Mogusu** with intent to steal and did steal from therein two table clothes and other items all valued at Kshs.8,800/= the property of the said **Edwin Mogusu**.

The appellant was convicted on her own plea of guilty and sentenced to five years' imprisonment on each limb of the offence. The sentences were to run concurrently.

The appellant was aggrieved by the said sentence and preferred an appeal to this court saying that the sentence was harsh and excessive.

The state through **Mr. Kemo, Senior Principal State Counsel** conceded the appeal. I agree with Mr. Kemo that considering the fact that the appellant pleaded guilty and the fact that she was a first offender and further considering the value of the stolen items, the sentence was rather harsh. The appellant has been in jail since 15<sup>th</sup> November, 2006. I allow the appeal and reduce the sentence to the period already served. The appellant is set at liberty unless otherwise lawfully held.

**DATED, SIGNED and DELIVERED at KISII this 22<sup>nd</sup> day of October, 2008.**

**D. MUSINGA**

**JUDGE.**

Delivered in the open court in the presence of:

The Appellant

Mr. Kemo, Senior Principal State Counsel for the Republic

Mr. Ondari holding brief for Mr. Sagwe for the appellant.

**D. MUSINGA**

JUDGE