

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 99, 100 &101 of 2007 (Consolidated)

JAMES GAITA KABIRU.....1ST APPELLANT

SIMON MWANGI KAMUNYA.....2ND APPELLANT

SAMUEL KARANJA WAMBUI.....3RD APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

JAMES GAITHA KABIRU, SIMON MWANGI KAMUNYA and SAMUEL KARANJA WAMBUI, the Appellants in the above appeals were charged with one count of breaking into a building and committing a felony contrary to **Section 306(1)** of the Penal Code and three counts of burglary and stealing contrary to **Sections 304(2)** and **279(b)** respectively. In the alternative each of them was also separately charged with handling stolen property contrary to **Section 322(2)** of the **Penal Code**. They pleaded guilty to the main charges and were each sentenced to three years imprisonment on each count and the sentences were ordered to run consecutively. They have now appealed to this court against both the conviction and sentence. Having perused the record I agree with Mr. Mugambi that the language used by the trial court is not indicated. The Appellants' pleas cannot therefore be said to be been unequivocal. I therefore allow this appeal, quash the conviction and set aside the sentence. The Appellants shall be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 14th day of November, 2008.

D. K. MARAGA

JUDGE