



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

**AT NAKURU**

**Criminal Appeal 304 of 2006**

**LILIAN WANJIKU GACHOKA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant herein Lillian Wanjiku Gachoka, was on 4<sup>th</sup> December, 2006, convicted on her own plea of guilty to a charge of housebreaking and stealing several household goods, valued at Kshs.17,000/= the properties of one Joseph Macharia Nduti. She was sentenced to a term of imprisonment of two years.

Being of the view that the sentence was harsh and excessive, she filed this petition of appeal raising 8 grounds of Appeal, ground 7 of which cites an imprisonment term of 13 years, despite stating in the body of the petition that she was sentenced to serve an imprisonment term of two years. The appellant attended the hearing of her appeal clutching in her arms a baby whose age appeared to be under one year. Asked by this court why she was under the impression that her imprisonment was for 13 years, the appellant replied that she got the information from the prison authorities.

The appellant having elected to have the State reply to her grounds of appeal as filed, the learned State Counsel, Mr. Njogu (for the State) conceded the appeal on the ground that from the record, where, according to counsel, the language of the court was not clearly specified, it would appear that some doubt exists as to whether the appellant clearly understood the charge and the facts to which she was called to answer when she pleaded guilty. Mr. Njogu submitted that the plea in those circumstances cannot be said to have been unequivocal.

The appellant appears to have misunderstood the sentence imposed upon her which the record shows to have been two years.

The fact that she believes she was imprisoned for 13 years would tend to confirm the State's opinion that she may equally have misunderstood the charge with the result that the plea of guilty cannot be said to have been unequivocal. She has told this court that she has already been in prison for 2 years. The record shows that she was committed to prison on 4<sup>th</sup> December, 2006 which is almost 2 years. The facts being as they are, I see no reason why the appeal should not be allowed and I hereby allow the same. The conviction is quashed and sentence hereby set aside.

The appellant is to be set free forthwith unless she be otherwise lawfully held.

DATED and DELIVERED on 14<sup>th</sup> day of November, 2008.

**M. MUGO**

**JUDGE**