

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Criminal Appeal 64 of 2008

SALIM MWAU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant, Salim Mwau, was charged with the offence of housebreaking contrary to Section 304 (1) and stealing contrary to Section 279 (b) of the Penal Code. He was arraigned before the Kilungu RM'S Court in Cr. Case No.425/2007 on 28/9/2007 and he pleaded guilty to the offence and when a Probation Officer's report was called for, it was found to have been previously convicted in Cr. Case No. 98/2007 and had breached the terms of Probation. He was then sentenced to serve 3 years in prison.

2. He now appeals against sentence only. My mind is clear that no wrong principle was invoked; no material factor was overlooked neither was the sentence excessive to warrant this court's interference – See **Wanyema vs R (1971) E.A 493**. The Appellant has himself pointed out no issue that should sway my mind to being lenient.

3. The Appeal cannot but be dismissed.

4. Orders accordingly.

Dated and delivered at Machakos this **16th** day of **December** 2008.

ISAAC LENAOLA

JUDGE

In Presence of: **Mr O'Mirera for Republic**

Appellant

ISAAC LENAOLA

JUDGE