

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 61 of 2008

HARRISON LEKIPAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

HARRISON LEKIPAN, the Appellant was charged with house breaking contrary to **Section 304(1)** and stealing contrary to **Section 279(b)** of the **Penal Code**. The particulars of the Charge were that on 29th day of February 2008 at Baawa Location in Samburu District within Rift Valley Province he broke and entered the dwelling house of Kiket Lelekipian with intent to steal therein and did steal one binoculars, two radios, one DVD, one camera and assorted clothes all valued at Kshs. 50,000/= the property of the said **KIKET LELEKIPIAN**. He was also charged with the alternative charge of handling stole property contrary to **Section 322(2)** of the **Penal Code**. He pleaded guilty to the alternative charged and was, upon conviction, sentenced to seven years imprisonment. He has appealed against that conviction and sentence describing it as harsh. He pleads for leniency arguing that he is the bred winner of his family and his imprisonment is causing them great hardship. Mr. Mugambi for the state left the matter of sentence to me.

I have considered the matter. The offence of handling stolen property carries a maximum sentence of 14 years imprisonment. While sentencing the Appellant the learned trial magistrate appears to have acted on the old provision of **Section 322(2)** which provided for a minimum sentence of seven years and that is the term he imposed upon the appellant. Given the circumstances of this case, I think that had the learned trial magistrate known of the amendment to that section eliminating the minimum sentence, he would have imposed a lesser term of imprisonment. In the circumstances, and taking into account the mitigating factors and the period the Appellant has been in prison, I reduce the sentence to such a term that will secure the Appellant's immediate release.

DATED and delivered this 11th day of December, 2008.

D.K. MARAGA

JUDGE.