

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA OF KISII

Criminal Appeal 151 of 2003

YUSUF OTIENO NYAMASI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the SRM's court at Oyugis in criminal case No. 206 of 2003)

RULING:

Appellant was convicted for offence of Burglary and stealing contrary to s.302 (2) and 279 (b) Penal Code. He was sentenced to five years imprisonment on each limb to run concurrently and to receive 3 strokes of the cane in each limb. He has appealed against sentence only.

The appellant pleaded guilty to the offence and was a first offender. Most of the stolen items were recovered. In the circumstances a sentence of five years for a first offender was excessive.

As for the sentence of 3 strokes of the cane consequently the law was amended and corporal punishment was done away with.

From the above I allow the appeal and set aside the sentence of five years imprisonment and 3 strokes of the cane in each limb and since the appellant has already served 3 years of sentence I substitute it with one for the period already served.

Appellant be set at liberty forthwith unless otherwise lawfully held.

Dated 9th March 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for State