

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA OF KISII

Criminal Appeal 129 of 2005

BENARD OUMA OWIYO APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the CM's court at Kisii in criminal case No. 383 of 2005)

JUDGMENT:

Appellant was convicted by Principal Magistrate Kisii on two offences the first being that of kitchen breaking and committing a felony contrary to s. 306(1) Penal Code and the second that of stealing contrary to s.275 Penal Code. He pleaded guilty and was sentenced to 7 years and 12 months imprisonment respectively. His appeal is against sentence.

Mr. Kemo pointed out that appellant had 3 previous convictions and the sentence was proper.

Indeed the appellant had three previous convictions. All the same the sentence of 7 years imprisonment in the first count was harsh. He told court that he was only 20 years old. The value of the stolen items was a mere sh.550/-. They were recovered. Thus though a custodial sentence was proper, 7 years imprisonment was harsh and excessive in the circumstances. I set aside the sentence of seven years imposed in count 1 and substitute it with one of 2 years imprisonment.

Dated 3rd April 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for State

Appellant present