



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Appeal 74 of 2005

(From original conviction (s) and Sentence(s) in Criminal case No. 18421 of 2003 of the Chief Magistrate’s Court at Makadara (Mrs. Mbugua– R.M.)

WILLIAM AKOLO OTIENO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

WILLIAM AKOLO OTIENO pleads with this court to find that the 18 months imprisonment he has served out of the possible 2 years exclusive of remission was sufficient punishment for the offence. The Appellant submitted that since he had served a substantial part of his sentence he was abandoning his appeal against conviction. The Appellant submitted that he had learnt his lesson and that he was remorseful for what he did.

The Appellant was convicted of **Hostel Breaking and Stealing** contrary to **Section 306(a)** of the **Penal Code**. He was sentenced to 3 years imprisonment. He has six months to go to complete his sentence.

Counsel for the State **Mrs. Gakobo** submitted that the sentence was legal and not excessive. Counsel cautioned that the Appellant was not a first offender. The Appellant on his part admitted he had committed a similar offence at the same place within a short time from the instant one.

I have considered the Appellant’s appeal against sentence. The Appellant does appear remorseful for the offence and pleads for mercy. Considering he has served a substantive part of the sentence, considering also that he was in prison custody for 18 months during the pendency of the case in the lower court a matter that the trial court did not consider, considering also that he is a young person, the one previous conviction notwithstanding, I am fully satisfied that the Appellant has served sufficient sentence for the offence.

Consequently I will allow his appeal against sentence by ordering that the sentence is reduced to the period already served. The Appellant should be set free unless he is otherwise lawfully held.

Dated at Nairobi this 12th day of July 2006.

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LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellant(s) – present

Mrs. Gakobo - State Counsel for Respondent

Tabitha – Court clerk.

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LESIIT, J.

JUDGE