



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO. 330 OF 2003**

**JAMES OMBASA BOSIRE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The appellant, James Ombasa Bosire, was charged with the offences of burglary contrary to Section 304 (2) and stealing contrary to section 279 (b) of the Penal Code. The particulars of the charge were that on night of the 5th and the 6th September, 2002 at Morro Farm, Subukia, Nakuru District, the appellant in the company of another, broke and entered the dwelling house of Monicah Wairimu Maina with the intent to steal therein and did in fact steal therein various household goods valued at Ksh.10,000/= the property of the said Monicah Wairimu Maina. The appellant pleaded not guilty to the charge. After a full trial, the appellant was convicted as charged and sentenced to serve two years imprisonment on each limb of the offence. The sentences were ordered to run consecutively. The appellant was also ordered to receive five strokes of the cane on each limb of the charge. The appellant was aggrieved by the said sentence imposed on him and he duly appealed against the said sentence to this court.

In his petition of appeal the appellant has basically mitigated and pleaded to this court to reduce the sentence imposed by ordering the two sentences imposed to run concurrently instead of consecutively. In his submission made before court., the appellant said that he was remorseful. He pleaded that he had been sufficiently punished for the said offences committed. He urged the court to consider the fact that he had been rehabilitated in prison and was now ready to be a useful member of the society having acquired a skill while in prison. The appellant swore that he was not going to re-offend again. He submitted that the court should therefore be lenient with him. Mr. Koech for the State left the decision on sentence to the court.

I have carefully considered the circumstances and facts of this case. The appellant was convicted for breaking into and stealing from a dwelling house. He is not challenging his conviction. He was however sentenced to serve two years imprisonment on each of the two limbs of the charge. The sentences were however ordered to run consecutively. On the strokes of cane ordered, I would set aside the same as it is a sentence no longer allowed by the Penal Code. I have considered the grounds advanced by the appellant in support for his plea for the reduction of the said prison term imposed. The appellant is remorseful. He had realised the folly of his ways. He says that he has reformed. From the submission made by the appellant, this court is of the opinion that the appellant should be given a chance to prove his worth to the society.

In the circumstance of this case I would set aside the sentence imposed by the trial magistrate and substitute the said sentence with a sentence of this court commuting the sentence of the appellant to the period already served. The appellant is therefore set at liberty unless otherwise lawfully held.

**DATED at NAKURU this 29th day of July, 2005.**

**L. KIMARU**

**JUDGE**