



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL APPEAL NO. 279 OF 2003**

**(Appeal against both conviction and sentence of the Resident Magistrate's court at Hamisi  
in Criminal Case No.583 of 2003 (W. B. O. TENGO, RM))**

**STANLEY SEVENI :::APPELLANT**

**V E R S U S**

**REPUBLIC:::RESPONDENT**

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

Stanley Seveni, the Appellant, was convicted on his own plea of guilty by the Resident Magistrate at Hamisi in Criminal case No.583 of 2003 on 5.12.03 of three counts of house breaking contrary to Section 304(1) and stealing contrary to Section 279(b) of the Penal Code and on 6.12.03 was sentenced to 3 years imprisonment on each of the three counts for housebreaking and a like sentence for stealing. All the sentences were to run concurrently.

He lodged appeal on 19.12.2003 against the severity of sentence. His Petition of Appeal contained a prayer for leniency and a non-custodial sentence.

As an appellate court, I am cognizant that the discretion exercised by the trial court in sentencing ought normally not to be interfered with except where the trial court acted on the wrong principle in sentencing or overlooked some material factor or where the sentence is manifestly excessive in the circumstances of the case. I observe that the trial court did, in passing sentence, indicate why a custodial sentence was called for. The trial court found that the appellant was a habitual offender at a tender age of 18 years who had been sent to Borstal Institution for 3 years and did not appear to be reformed. Although the appellant had pleaded guilty and sought leniency, he was not a first offender. He had been given chances previously to mend his way and become a better member of the society but he continued to be a social menace by continuing to break the law. In the circumstances of this case, the sentence meted out was not excessive. I am not declined to interfere with it. I find no merit in the appeal and I dismiss it.

***Dated at Kakamega this 14th day of July, 2005.***

**G. B. M. KARIUKI**

**JUDGE**