



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**Criminal Appeal 230 of 2004**

**(From Original conviction and sentence in Criminal Case No. 1269 of 2004 of the Senior Resident Magistrate's court at Limuru**

**ISAACK KARIUKI GITHINJI .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The Appellant in this Appeal, **ISAACK KARIUKI GITHINJI**, (to whom I shall refer to as the "Appellant") was charged in the Lower Court with another person with the offence of house breaking contrary to Section 304 (1) and stealing contrary to Section 279 (b) of the Penal Code. They also faced an alternative count of handling stolen goods contrary to Section 322 (2) of the Penal Code. The particulars of each count were specified in the charge sheet.

When the charges were read to the appellant, he pleaded guilty and a plea of guilty was entered against him. The facts were then read to him and he confirmed that the facts as read were true. He was accordingly convicted and after mitigation, sentenced to serve a period of imprisonment for five (5) years on first count only. The Appellant was aggrieved with the said sentence and has filed the Appeal before me. The Appeal is premised on three grounds which are as follows:-

1. **THAT** the Learned trial Magistrate erred in Law and fact by sentencing me to 5 years imprisonment without even giving me an opportunity to explain in Court how I came into possession of the Complainant's property.
2. **THAT** the Learned trial magistrate erred in law and fact in sentencing me to 5 years imprisonment on my own plea even before she cautioned me of the dire consequences of the plea.
3. **THAT** the Learned trial magistrate erred in law and fact in failing to caution herself before she arrived at the decision she arrived at.

In his address to me, the Appellant who was unrepresented confirmed that he was only appealing against the sentence. He submitted that the sentence imposed was harsh and excessive. That he was remorseful. He was also a first offender. He therefore urged the court to consider reducing the sentence imposed. Mrs. Kagiri, Learned State Counsel opposed the Appeal maintaining that the sentence of five years imprisonment was neither harsh nor excessive in the circumstances of this case. The offence committed was serious and prevalent in Ruai Area of Nairobi. The sentence of five years imposed on the Appellant should serve as a deterrent to others like minded. She therefore urged Court not to disturb the sentence.

I have considered the submissions by the Appellant and by the Learned State Counsel, as well as the facts and circumstances of the case and the Law. The offence for which the Appellant was convicted carries a maximum sentence of seven years. The Appellant was slapped with 5 years imprisonment. He was a first offender and pleaded guilty to the charge at the first instance and thereby saved the Court valuable Judicial time. He was a young man. Some of the items stolen by the Appellant were recovered.

On my own evaluation of the facts and the above circumstances of the case, I think that five years imprisonment in the circumstances of this case may appear to be excessive and or harsh though lawful. I will interfere with the same to the extend that the Appellant shall now serve three years imprisonment only. To that limited extend, the Appeal succeeds.

Dated at Nairobi this 21st of September, 2005.

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**M. S. A. MAKHANDIA**

**JUDGE**