



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MACHAKOS  
Criminal Appeal 229 of 2003

*(From Original conviction (s) and Sentence (s) in Criminal Case No. 988 of 2002 of the Resident Magistrate's Court at Makindu R. MIBEI R.M on 27/11/02)*

KYALO WAMBUA ..... APPELLANT  
VERSUS  
REPUBLIC ..... RESPONDENT

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

The appellant was convicted on three counts of store breaking and committing a felony Contrary to Section 307 of the Penal Code by Resident Magistrate's Court, Makindu. The offences were allegedly committed on the night of 16th and 17th November 2002 at Ikoyo Market, Kiboko location. The appellant was convicted on his own plea of guilty and sentenced to serve 3 years imprisonment on each count and the sentences were to run consecutively.

The appellant filed this appeal against both conviction and sentence but in arguing his appeal, he has abandoned the appeal on conviction and only pursued his appeal on sentence. His argument is that the order that the sentences run consecutively is harsh and urges court to be merciful and lenient and that he is remorseful. He urges the court to reduce the sentence.

The learned state counsel conceded to the appeal and submitted that the sentence was too harsh.

The stores which were broken into by appellant were in the same plot and he was arrested before he stole anything. The maximum sentence that can be meted under Section 307 Penal Code is 5 years imprisonment. Appellant then pleaded guilty. Even if it was a deterrent sentence, the court should have taken into account all the above factors before sentencing. I do agree that the sentence is harsh and I will order that the appellant be sentenced to three years imprisonment on each count but that they do run concurrently.

Appeal is allowed to that extent.

**R.V. WENDOH**  
**JUDGE**

**Dated at Machakos this 3rd day of October 2005**

**Read and delivered in the presence of**

**R.V. WENDOH**  
**JUDGE**