



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**CRIMINAL APPEAL NO. 187 OF 2003**

(From Original Conviction and Sentence in Criminal Case No.201 of 2003 of the Senior Resident Magistrate's Court at Lamu – J.D.C. Kombe, Esq., - S.R.M.)

MOHAMED SHALI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**JUDGMENT**

The appellant was charged with the offence of Breaking into a Building and committing an offence contrary to section 306(a) Penal Code in that he broke into a mosque, entered therein and stole an ancient pot valued at 10,000/=.

The appellant pleaded guilty to stealing and when facts of the offence were read to him he admitted without any reservation, all the facts. He was a first offender, in his mitigation he asked for forgiveness.

However the Trial Magistrate considered everything and imposed a sentence of 4 years imprisonment with 4 strokes of the cane. This I was on 22.5.2003 by which time the corporal punishment was already outlawed. Therefore this part of sentence is unlawful and the same is set aside.

As to the term of imprisonment it is to be noted that maximum sentence is 7years. In the circumstance of this case where the plea of guilty was offered and the appellant was a first offender, and the stolen item was recovered. 4 years imprisonment is on the high side. The appellant is also a young man of 19 years.

I have perused the grounds of appeal. The appellant attempts to change his story after making admission to different facts. He now says the pot was not his and he was requested by owner to carry the pot and the owner went away, that he was sentenced without trial. These grounds have no merit. His age has been certified as being 19 yrs not 15 years as he now says. The appellant should know that having freely admitted the charge and particulars there would be no need for a trial. This is provided under section 207 Criminal Procedure Code, Cap 75. He is not challenging the manner the plea was taken.

On the issue of sentence the court finds the same to be high side in the circumstances. An accused who pleads guilty immediately he is called upon to plead should be treated with leniency for saving court time.

Also a first young offender is to be given consideration to give him opportunity to reform before he is contaminated by association with hardcore criminals in jail. In this case he has been in ail since May 2003.

In the circumstances I hereby set aside the sentence of imprisonment for the term of 4 years and substitute the same with an unconditional discharge.

The appellant shall be set free at once unless otherwise lawfully held.

**Dated at Mombasa this 29th day of January, 2004.**

**JOYCE KHAMINWA**

**JUDGE**

Read in presence of:-

Ms Kwena Appellant

Appellant

In open court.