<u>REPUBLIC OF KENYA</u>

<u>IN THE HIGH COURT OF KENYA AT BUNGOMA</u>

<u>CRIMINAL CASE NO. 89 OF 2003</u>

(From Original Webuye 532 of 2003 before L.N. Mutende SRM Webuye)

MOSES MUSANGERI WANDERA ………… APPELLANT

VS

REPUBLIC …………………. RESPONDENT

J U D G M E N T

The appellant pleaded guilty to a charge of Burglary contrary to section 304 (2) and stealing contrary to section 279 (1) of the Penal Code. The particulars of the charge are that on the nights of 28th and 29th day of June 2003 at Wananchi area, Webuye township in Bungoma District within Western Province broke and entered the dwelling house of Zakayo Wekesa Simiyu with intent to steal therein and did steal one Sonny radio cassette model No. C.F.S. 929 S. Serial No. 0052078 S, one mosquito net, one sonny radio I.C.F. – FLO, three long trousers, two T-shirts, one half jacket, one hand bag, one towel, one shirt all valued at Ksh.23,850 the property of the said Zakayo Wekesa Simiyu.

The appellant was convicted and sentenced to serve 3 years imprisonment on each limb of the charge plus 6 strokes of the cane. The sentences were ordered to run concurrently. Being aggrieved the appellant only appealed against the conviction on the ground that he did not understand the language of the court.

The learned senior state counsel opposed the appeal on the ground that the same lacked merit because the appellant understood the languages of the court. He pointed out to this court that the appellant argued his appeal using Kiswahili language hence he understood the language which was used during his trial before the trial court.

I have considered the appellant's submission and that of the learned senior state counsel. I have also perused the record of appeal which reveals that language used by the lower court was Kiswahili which is indicated that the appellant was well versed with. There is no evidence to show that the appellant did not speak Kiswahili. He did not protest. I am convinced that the appellant was conversant with and spoke Kiswahili language. Hence the appeal against conviction is dismissed.

Though the appellant did not appeal against sentence, however the law has since then been changed in which the punishment by corporal punishment has been done away with. Consequently the order imposing six (6) strokes of the cane on the appellant is set aside.

In the final analysis therefore is that the appeal has no merit, it is dismissed save that the order on strokes of the cane is set aside.

DATED AND DELIVERED THIS 28TH DAY OF MAY 2004.

J.K. SERGON

JUDGE