

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.313 OF 2003

(From original conviction and sentence of the CM's court at Kisii in criminal case No.2566 of 2003)

JACOB MISOKA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

Appellant was convicted by Principal Magistrate Kisii for the offence of House Breaking and Stealing c/s 304(1) and 279(b) of the Penal Code. He pleaded guilty and was convicted and sentenced to five years imprisonment on each limb to run concurrently. He has now appealed against the sentence.

In his first ground of appeal he states that he is a young man and as a first offender he should have been given non-custodial sentence. In ground two he states that sentence of 5 years is manifestly harsh and excessive.

Indeed appellant is a young man. In mitigation he said he was 18 years. However he was not a first offender as court was told he was on probation on another similar offence. However even if he was not a first offender the sentence of 5 years for a young man of 18 years is harsh. The goods stolen were valued only shs.800/=. Though he may not have benefited with custodial sentence the sentence was excessive.

I therefore set aside the sentence of 5 years imprisonment in each limb and substitute it with one of one (1) year imprisonment in each limb. To run concurrently.
It is so ordered.

Delivered on 22nd June 2004.

**KABURU BAUNI
JUDGE
22/6/04**

