

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.6 OF 2004

**(From original conviction and sentence of the Chief Magistrate's Court at Kisii
Criminal Case No.1295 of 2004 –S. M. S. SOITA ESQ., P.M)**

THOMAS OMBATI MOMANYI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant THOMAS OMBATI MOMANYI was convicted on his own plea of guilty on two charges of House breaking and stealing c/s. 304 (1) and 279(b) of the Penal Code by the Principal Magistrate Kisii. In each count he was sentenced to seven (7) years imprisonment in each limb of the count. He has now appealed against the sentence only.

In his first ground of appeal the appellant stated that the trial magistrate failed to consider that he was a first offender and had pleaded guilty and therefore should have been given non-custodial sentence.

In ground No.2 he states that the sentence imposed was overly harsh and excessive.

In sentencing the trial court only state:

“All factors considered” and went on to award sentence of seven years in each limb. Indeed the offences appellant was convicted of were serious.

However as he puts in his ground it is not clear whether the court considered that he was a first offender and had pleaded guilty. In his mitigation he prayed for leniency, and went on to name those he committed the offence with.

The court should have considered these issues before sentencing and if it did so I believe it would have awarded a lesser sentence. Some of the stolen items were recovered and they formed the alternative charge of handling stolen property.

I therefore allow the appeal and set aside the sentence and substitute it with one of two (2) years imprisonment on each limb of the two counts. The jail terms will run concurrently.

KABURU BAUNI

JUDGE.

20/7/04

Delivered on 20th July 2004.

KABURU BAUNI

JUDGE.

