

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII.
CRIMINAL APPEAL NO.3 OF 2004

**(From original conviction and sentence of the Chief Magistrate's Court at Kisii in
Criminal Case No.3093 of 2003 –S. M. S. SOITA ESQ., P.M)**

REPUBLIC APPELLANT

VERSUS

ISAAC BOGENI MACHENGE RESPONDENT

JUDGMENT

Appellant Isaac Bogani Machenge was charged with two others for the offence of Kitchen breaking and committing a felony c/s 306(a) Penal Code. The three pleaded guilty and were convicted. Appellant was jailed for 5 years and his two accomplices jailed for 2 years which term was suspended for 6 months. Appellant now appeals against the sentence.

The appellant was on probation for 2 years for a similar offence when he committed the current one. This is what prompted the learned magistrate to hand him a term of five years. However even though he was not a first offender sentence of five years was harsh. He pleaded with the court for forgiveness. He readily admitted he was on probation. The value of the stolen items was shs.2,900/=. Though a custodial sentence was called for five years was on the higher side.

I therefore set aside the sentence of five years imprisonment and substitute it with one for 12 months imprisonment.

It is so ordered.

KABURU BAUNI

JUDGE.

8/7/04

Signed, dated and delivered on 8th July 2004.

KABURU BAUNI

JUDGE.