



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)**

**crim app 367 of 02**

**BONFACE MUTIE MUTISYA ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The appellant was convicted of attempted burglary contrary to section 304 subsection 2 as read with section 389. He was convicted and sentenced to 2 years with 4 strokes of a cane. He abandoned his appeal on conviction. He has given further grounds of mitigation. He has not received the strokes of the cane ordered by the lower court. The State does not oppose the reduction of sentence. Only two months or so of the sentence remain. I have considered the appeal. I agree with the State Counsel Miss Nyamosi that he appellant has served enough. He can have his sentence reduced by the months remaining to be served and can be spared of the four strokes of the cane.

This court accordingly allows the appeal on sentence only. The appellant will serve what sentence he has already served and the strokes of the cane part is hereby removed from his sentence. To that extent the appeal is allowed.

The upshot is that the appellant will be released from prison forthwith unless lawfully detained.

**It is so ordered.**

**Dated and delivered at Nairobi this 26th day of March 2003**

**D.A. ONYANCHA**

**JUDGE**