

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 114 of 2001

(From original conviction and sentence in Criminal

Case No.1080 of 2000 of the Senior Resident Magistrate's

Court at MOLO - J. KIARIE (S.R.M.)

**JOHN KIMITA MAINA.....
.....APPELLANT**

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the sentence on grounds it was excessive and that he was young aged only 20 years old.

The State Counsel did not oppose the appeal and submitted that value of goods stolen was 2000/- and that most of it was recovered through co-operation by the accused. The charge facing the Appellant was House Breaking and Stealing contrary to Section 304(1) and 279(b) of the Penal Code. He was sentenced to 7 years imprisonment and 2 strokes of the cane on each limb with prison terms running concurrently and the strokes cumulatively.

I do agree that given the circumstances of the offence that the sentence was excessive. The sentence of strokes on the first limb of House Breaking was illegal as that charge does not call for corporal punishment. I will allow the appeal in part by reducing the prison terms to 3 years imprisonment on each limb and setting aside corporal punishment of 2 strokes on the first limb. Prison terms should run concurrently from date of sentence.

Dated and delivered at Nakuru this 25th day of March, 2003.

JESSIE LESIIT

JUDGE