

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.10 OF 2001

**(From original conviction and sentence in Criminal
Case No.44/2001 of the Senior Resident Magistrate's
Court at NAIVASHA –B. F. ODHIAMBO(S.R.M.)**

RAYMOND KIPLANGAT KIPTOO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant appeals against the sentence only, having pleaded guilty during plea to the offence of BREAKING INTO A BUILDING AND COMITTING A FELONY contrary to Section 306(a) of the Penal Code. He was sentenced to 3 years imprisonment and 1 stroke of the cane. He pleaded for mercy and leniency from this court saying he was remorseful for the offence.

The Learned Counsel for the State does not oppose the appeal against sentence. He however pointed out to the court that the plea was equivocal.

I do agree with the State Counsel. The facts of the case did not disclose any offence. All it states is that after the alleged breaking into his shop on 12/11/2000, the Complainant was summoned by the OCS Kongoni Police Station where he was shown the Appellant and told he had confessed to the theft. That one video deck stolen that day was recovered from one MIKOYA. The Appellant pleaded guilty to those facts.

The facts do not support the particulars of the charge and neither do they disclose that an offence was committed by the Appellant. The conviction was therefore irregular and the sentence wrong. The Appellant has served almost the entire 3 years. It will not serve the interest of justice to order for a retrial.

I accordingly, quash the conviction, set aside the sentence and order for the immediate release of the Appellant unless otherwise lawfully held.

Dated and delivered at Nakuru this 18th day of March, 2003.

**JESSIE LESIIT
JUDGE**

