

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 382 OF 2002

**(Being an appeal against Sentence in Criminal Case No. 2199 of 2002
by the Chief Magistrate's Court at Mombasa J.S. Mushelle (S.P.M.)**

ANWAR ALI ANJAWA APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 72 OF 2003

MUHSIN ABDALLA APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

J U D G M E N T

The two appeals were consolidated on application by the State Counsel. Both Appellants were charged and convicted on a charge of Burglary and Stealing Contrary to Section 304 (2) and 279 (b) of the Penal Code. They were convicted on their own plea of guilty and Sentenced to 4 years imprisonment plus two strokes of the cane each. They have preferred an appeal against sentence only.

The facts of the case were that the complainant had left for Nairobi on 7.8.02 and requested her brother who lived in the neighbourhood to look after her house. However the said brother also travelled to Lamu and returned on 15.8.02 and on 16.8.02 at around 1.00 p.m. while at work he received information that the complainant's house had been broken into. When he arrived at the house he found stolen the items named in the charge sheet all valued at Kshs.538,600/=. However the thieves had been spotted and matter reported to Central Police Station. ANWARI ALI (NYAWA) was the first to be arrested and on being interrogated he admitted having stolen the items and led them to Majengo where 2 trumpets were found. He also lead police to where he had sold a third one. It was this same appellant who gave the names of his accomplices one of them being the second Appellant herein MUHSIN ABDALLAH (CHETAY). He too led the police to Bondeni area where two wooden beds were recovered.

Their Counsel Mr. Abubakar said the sentence was too harsh considering that the appellants were first offenders and the stolen items were recovered and they had pleaded guilty to the offence as a sign of remorse on their part. The State Counsel was in agreement but was opposed to substitution of the Sentence with a fine.

I have considered the facts as they appear on record and the mitigation. The appellants are no doubt

young but it should not be overemphasized at the expense of the victim who only recovered a portion of the stolen items. The Appellants if truly remorseful should be prepared to suffer the consequences of their action. However I have also considered that they are first offenders and for the said reasons will reduce the sentence to one of 2 years and 2 strokes of the cane each. The appeal shall succeed to that extent only.

Dated ad Delivered at Mombasa this 18th day of June, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE