

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 62 OF 2003

(Being an Appeal against Sentence in Criminal Case No. 67 of 2003 by the Resident Magistrate's Court at Wundanyi – A. Ngugi)

MICHAEL MWATELA MWAMBURI APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G E M E N T

Michael Mwatela Mwamburi was charged with the offence of House Breaking and Stealing Contrary to Section 304(1) and 279(b) of the Penal Code on the main charge. He also faced an Alternative Charge of Handling Stolen Goods Contrary to Section 322(2) of the Penal Code. He was convicted on his own Plea of Guilty on the main Count and Sentenced to serve 3 years Imprisonment.

The Convicting Court also went further to Convict him on the Alternative charge as though it was a separate Limb of the main charge and sentenced him to 3½ years imprisonment with 4 strokes. This was improper in that the second charge was in the alternative and secondly no Plea on the same was taken. Having been convicted on the main charge, the Court was in no position to Convict him on the Alternative charge. In the circumstances, the Conviction is quashed on the Sentence on the alternative charge. As to the Sentence on the main charge, the appellant was sentenced to three years imprisonment. The maximum provided for by law is 14 years together with Corporal punishment. The offence is serious and the Sentence in the Court's opinion is not excessive in the circumstances.

The Appeal shall therefore succeed partly and the appellant is to serve 3 years imprisonment. That the order of the Court.

Dated and Delivered at Mombasa this 29th day of July, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE