



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL APPEAL NO. 1228 OF 2000**

**From original Conviction (s) and Sentence (s) in Criminal Case No. 703 of  
2000 the Principal Magistrate's Court at Kiambu.**

**FESTUS MWANGI NGUGI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The appellant was convicted of the offences of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the Penal Code. On the first limb of the offence he was sentenced to seven years imprisonment while on the second limb he was also sentenced to seven years imprisonment and to suffer four strokes of the cane being aggrieved by the said conviction and sentence he appealed.

The house belonging to the son of PW1 had been broken into and the goods mentioned in the charge sheet stolen. Investigations led to a one-roomed timber home occupied by the accused now the appellant. Although the home belonged to his brother, the said brother was serving a prison term. On the same day, the appellant was arrested and led to the same house. Using a key he had in his possession, he opened the padlock, and inside, the property stolen was recovered. The property was positively identified as belonging to the owner of the house that had been broken into.

I have looked at the defence of the appellant. The goods were found in the house of this brother but his brother was not present. His allegation that it was the assistance Chef that had the key to the house cannot be true in view of what the prosecution witnesses said.

The recovery was soon after the alleged offence. The doctrine of recent possession applied and the learned trial magistrate rightly considered the evidence before her before the conviction. Convictions were justified.

On sentence, the appellant had a provisions conviction, which was not relevant to the charge. There was full recovery of the goods stolen. I have looked at the penalty provided for such offences and with respect find the sentences handed down by the learned trial magistrate to be on the higher side. I am therefore inclined to interfere with the same. I set aside the sentences and in place thereof impose three years imprisonment plus two strokes of the cane for EACH limb of the offence. Sentences shall run concurrently.

Except for the reduction of sentence, the appeal is dismissed.

Orders accordingly.

**Dated and delivered at Nairobi this 14th day of February 2002.**

**A. MBOGHOLI MSAGHA**

**JUDGE**