



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 252 OF 2001**

**(From Original Conviction and Sentence in Criminal Case No.370 of 2001 of the Resident Magistrate's Court at Voi –E.N. Maina, Ms –S.R.M.)**

**JULIUS NZAE.....APPELLANT  
=V E R S U S=  
REPUBLIC.....RESPONDENT**

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

The Appellant appeals against the sentence of 18 months and two strokes of the cane meted out to him for the commission of the offence of hotel-breaking. He was originally sentenced to serve a probation sentence of 3 years. He decided to break the terms of the probation by committing a fresh deliberate offence of house-breaking and stealing therefrom. When he pleaded guilty to the fresh offence, and was sentenced, it became imperative as provided under the law that he should be punished for the first offence.

He now appeals as stated above.

The maximum sentence provided under the law is 7 years together with strokes of a cane. The lower court gave him 18 months together with 2 strokes of the cane. This court has looked at the lower court record. The trial Magistrate considered the fact that the Appellant had breached the terms of the probation by repeating the offence only two months after being let out. In my opinion the Appellant deserved a greater sentence than 18 months and two canes. However, the Magistrate was entitled to give what he thought the case deserved. He does not appear to have breached any principles of sentencing. I see no reason to interfere with the sentence which I here confirm. The issue of age was settled by the doctor's medical examination which confirms that the Appellant was 18 years when he committed the offence. This appeal is dismissed.

**Dated and delivered at Mombasa on the 6th day of May, 2002.**

**D. A. ONYANCHA  
J U D G E**