



**REPUBLIC OF KENYA**

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

**APPELLATE SIDE**

**HIGH COURT CRIMINAL APPEAL NO. 321 OF 2000**

**From Original Conviction(s) and Sentence(s) Criminal Case No. 220 of  
2000 of the Snr. Resident Magistrate's Court at Limuru**

**JULIUS MWANGAI IDAYA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

The appellant was convicted of the offence of breaking into a building and committing a felony C/s 306(a) of The Penal Code, and sentenced to 12 months imprisonment and two strokes of the cane. Being aggrieved by the said conviction he appealed.

In the lower court, there was an advocate on record. The date of hearing was taken in his presence. When the case came up for hearing, the said advocate was absent. The record shows That the court waited for him or some time up to 10.00am. When he did not turn up the trial proceeded. The appellant did not protest. He participated in the trial and cross examined the witnesses. It cannot now be said that the appellant was denied representation. No prejudice was occasioned.

The building alleged to have been broken into was a store belonging to Pw2. There were three people who did so. Pw1 saw those people. He knew them. Two disappeared. Only the appellant was arrested. The padlock alleged to have been broken was recovered. The wheelbarrow stolen from the store was never recovered.

The alleged offence was committed during daylight – 1.00pm. There was no issue of mistaken identity. Pw2 the owner of the premises also knew the appellant.

“The appellant said in his defence that he was framed due to some grudge. This was denied by the prosecution witnesses and it did not come up in the evidence.

On my part, I am satisfied that the offence was proved beyond any reasonable doubt. The conviction was well founded. The sentence was not excessive.

In the end, this appeal is hereby dismissed. Order accordingly. Dated and delivered at Nairobi this 19th day of June, 2002

**MBOGHOLI MSAGHA**

**JUDGE**