

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.354 OF 1998

(Being an appeal from Original Conviction and Sentence in Criminal Case No.3096 of 1998 of Chief Magistrate's Court at Mombasa –R. Ndubi, DM.II)

JOSEPH OUMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant was convicted for the offence of housebreaking and stealing under Sections 304(1) and 279 (b) of Penal Code. He was sentenced to 2 years and 2 strokes on 9.10.98. He has today served his imprisonment now he says he would like to be released from corporal punishment because of his ill health. I notice his co-accused was released after serving only one year on 12.12.99. He did not suffer corporal punishment. The charge sheet does not indicate what time of day the offence was committed. I therefore apply section 304(1). That offence does not require corporal punishment.

On the issue of stealing under Section 2789(b) the circumstances surrounding the committing of offence are not very serious. In the circumstances the sentence was excessive. This court is of the view that the infliction of corporal punishment is excessive. The sentence is set aside to the extent that the corporal punishment shall not be applied to the appellant. The Appellant shall therefore be released forthwith. He has spent more time in prison than he was sentenced to. The co-accused was released before serving sentence.

Dated at Mombasa this 28th Day of August, 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE