



REPUBLIC OF KENYA



**Mwikali v Republic (Criminal Appeal E094 of 2022)  
[2024] KEHC 16 (KLR) (11 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 16 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E094 OF 2022  
GMA DULU, J  
JANUARY 11, 2024**

**BETWEEN**

**KENNEDY MATHINA MWIKALI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the conviction and sentence in Criminal Case No. E253 of 2022  
delivered on 30th May 2022 at Makindu by Hon. J. D. Karani(RM))*

**JUDGMENT**

1. The appellant was charged with breaking into a building contrary to Section 306(a) and stealing contrary to Section 279(3) of the [Penal Code](#).
2. The particulars of offence were that on 9<sup>th</sup> April 2022 at Machinery trading centre in Kibwezi Sub County within Makueni County jointly with others not before court broke and entered into the shop of Peter Musyoki and did steal 40 packets of green PK, 4 packets of blue PK, 35 packets of juicy fruits, 5 cartons of Gomba chewing gum, 2 jerricans of 20 litres of Salit cooking oil, 7 packets of Big G, 2 parcels of rooster cigarettes, 2 parcels and one packet of safari cigarettes, one parcel and 5 packets of sportsman, one robot radio, 20.5kg of sugar and 5 cartons of rainbow milk (500ml) all valued at Kshs. 57,230/= the property of Peter Musyoki.
3. He was also charged with an alternative count of handling stolen goods contrary to Section 322(1)(2) of the [Penal Code](#).
4. When he was brought to court, he was recorded as having pleaded guilty to the main count of breaking into a building and stealing, was convicted and sentenced to pay a fine of Kshs. 100,000/= in default 3 years imprisonment on the 1<sup>st</sup> limb of the offence and a fine of Kshs. 100,000/= and in default 3 years



imprisonment for the 2<sup>nd</sup> limb of the offence, and sentences to run consecutively which is a total of 6 years.

5. The appellant has now come to this court on appeal against sentence and wants the sentence to be reduced.
6. The appeal was canvassed through written submissions, and I note that the Director of Public Prosecutions considers that the consecutive sentences are harsh and has conceded to reduction of sentence.
7. Having myself reconsidered the matter, the fact that the appellant pleaded guilty to the charge and did not waste court's time, and that a number of the stolen items were recovered, I am of the view that the sentence was harsh and excessive. I will thus reduce the default prison sentence to 2 years imprisonment for each limb of the offence.
8. I thus order that the appellant be and is hereby sentenced to Kshs. 100,000/= in default 2 years imprisonment, for the 1<sup>st</sup> limb of the offence, and fine Kshs. 100,000/= in default 2 years imprisonment for the 2<sup>nd</sup> limb of the offence to run consecutively which is a total of 4 years imprisonment from the date he was sentenced by the trial court.

**DATED, SIGNED AND DELIVERED THIS 11<sup>TH</sup> DAY OF JANUARY 2024 VIRTUALLY AT VOI.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Ms. Nusura – Court Assistant

Appellant

Ms. Omolo for State

