



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL APPEAL NO 122 OF 2017**

**HASSAN ALI LENTONTO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Appeal from original Sentence dated 10/07/2017 in Maralal PM**

**Criminal Case No 495 of 2017 – A Gachie, SRM)**

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

1. The Appellant herein, **HASSAN ALI LENTONTO**, was on 10/07/2017 convicted upon his own plea of ***stealing in a dwelling house*** contrary to **section 279(b)** of the ***Penal Code*** and sentenced to five (5) years imprisonment. He has appealed only against that sentence.
2. It is apparent from the record of the trial court that the justification for the sentence meted out to the Appellant was the allegation in the particulars of the charge and the facts given that the Appellant had threatened to harm the complainant in the course of the theft. It is to be noted however, that the Appellant could have been charged with robbery in the circumstances; he was not so charged. The trial court should therefore have seen the offence that the Appellant stood convicted of for what it was – that is, ***stealing from a dwelling house***, not what he could have been charged with – ***robbery***.
3. In the circumstances, the trial court ended up meting out a sentence that was manifestly harsh and excessive in the circumstances. This court can therefore lawfully interfere.
4. I will partially allow the appeal against the sentence by setting aside the term of five (5) years imprisonment and substituting therefore four (4) years imprisonment from the date the Appellant was sentenced, that is, 10/07/2017. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2020**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 15<sup>TH</sup> DAY OF OCTOBER 2020**