



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL APPEAL NO. 88 OF 2017

(From original conviction and sentence in Criminal case NO. 575 of 2016

delivered by P.C. Biwott Senior Principal Magistrate on 21/10/2016)

BRIAN MWANGI AKAMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The appellant was charged with the offence of **Breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code.**

The particulars of the offence were that **on the 7th day of January 2016 at umbrella point club, within Trans Nzoia County, broke and entered and committed a felony namely Stealing cash Kshs 30,000/- the property of the said Charles Murunga.**

2. He was convicted and sentenced to 4 years imprisonment. He filed his appeal which was basically mitigation .

3. The facts as presented by the witness at the trial court showed that the appellant who worked at the complainant's bar known as "Umbrella Bar" did gain entry therein by force. He broke the safe and stole a sum of Kshs 30,000/-. He disappeared and did not turn up the following day.

4. He was however traced and arrested. There were photographs produced showing the extent of the break in. The hammer which he had borrowed was also produced.

5. In essence the appellant though he gave unsworn evidence, was nonetheless too weak to convince the trial court.

6. I have perused the mitigation herein. I Also note that the appellant seemed to have been in custody since 8/2/2016 and thereafter being convicted. I find the time served in custody to have taught him a lesson. The appeal is otherwise dismissed.

7. However by virtue of the period he has been in custody, the appellant is hereby released unless lawfully held.

Delivered, signed and dated at Kitale this 10th day of May 2018.

H.K. CHEMITEI

JUDGE

10/5/18

In the presence of:

M/S Kakoi for the Respondent

Appellant – present

Court Assistant – Kirong

Judgment read in open court.