



**REPUBLIC OF KENYA**

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

**HCCRA NO. 162 OF 2017**

**COLLINS KIBET MUTAI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[An Appeal from the original conviction and sentence in Eldama Ravine Principal Magistrate's Court Criminal Case No. 407 of 2017 delivered on the 7<sup>th</sup> day of June, 2017 by Hon. J. Tamar, PM]**

**JUDGMENT**

1. The appellant was after a plea of guilty convicted for Burglary contrary to section 304 (1) (b) of the Penal Code as read with section 304 (2) of the Penal Code. The value of the stolen items was Ksh.9,000/= being 2 bags of maize.
2. The plea was unequivocal and recorded in Kiswahili, with English translation after the charge is shown to have been “*read over and explained to the accused in a language that he/she understands i.e Kiswahili/English*” to which he replied “*Ni kweli/ it is true*”. There is no merit in submission that the plea was equivocal.
3. The sentence of imprisonment for 5 years is on the higher side having regard to the following factors in sentencing:
  1. That the appellant pleaded guilty. See Guidelines on Sentencing, Kenya and **Sayeko v. R** (1989) KLR 306, 310.
  2. The value of the stolen items is modest. See **Ambani v.R** (1990) KLR, 161; and
  3. The appellant had no previous records and was a first offender. See **Wanjema v. R** (1971) EA 493, 494.
  4. The court feels justified to interfere with the sentence and reduce it to an imprisonment term of 3 ½ years taking into account the seriousness of the offence of Burglary as distinguished from House Breaking.

**Order**

5. Accordingly, for the reasons set out above the sentence herein imposed for the offence of Burglary contrary to section 304 (1)( b) as read with 304 (2) of the Penal Code is reduced to imprisonment for 3 ½ years beginning the date of conviction and sentence in the trial court on 7/6/2017.

**DATED AND DELIVERED ON THIS 17<sup>TH</sup> DAY OF JULY, 2018**

**EDWARD MURIITHI**

**JUDGE**

**Appearances:**

M.K Chebii &CO Advocates for the appellant

Ms Macharia Ass. DPP for the Respondent