



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARSEN**

**CRIMINAL APPEAL NO 34 OF 2017**

**H A A.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Being an appeal from the judgment and sentencing of Hon. Victor Asiyo Resident Magistrate in Lamu Criminal Case No. 77 of 2015 delivered on 31/08/2017)

**JUDGMENT**

1. This appeal has been conceded by the State. It is my duty however to subject the evidence to a fresh review to confirm whether or not the appeal is merited.
2. The Appellant H A A and one J G A (minor offender) were charged with the offence of housebreaking contrary to section 304 (i) (b) and stealing contrary to section 279 (b) of the Penal Code. The particulars of the offence were that they broke and entered the building used as a dwelling house of Swabra Bwana Hamadi and stole various household electronics namely one television set make Samsung, DVD make Sony, Video make Auoma. They also stole a wall clock, ATM card and cash Kshs. 62,000, bringing the total value of the stolen property to Kshs 103,700/=.
3. I have reviewed the evidence before the trial court. There was no eye witness who saw both accused breaking into the house of the complainant. However there was the undisputed evidence that the complainant had requested to leave the house keys with the 1<sup>st</sup> accused who was in their shop downstairs. Both the 1<sup>st</sup> and 2<sup>nd</sup> accused were neighbours to the complainant and it came through in the evidence that it was not the first time that the complainant had entrusted them with his house keys.
4. There was also clear evidence that one A had on the material day gone to the building and asked for the 1<sup>st</sup> accused and that the three persons being the 1<sup>st</sup> and 2<sup>nd</sup> accused and the said A were seen by PW2 leaving the building. PW2 was categorical that A was carrying a sack containing some unknown items as they left the building.
5. My careful analysis of the evidence shows that the prosecution proved its case to the required standard. The accused's defence amounted to a mere denial. Both accused could not account for the break in having had the keys to the complainant's house at the material time. They could not also account for the appearance of one A whose company they kept even when he was carrying away the complainant's goods in a sack.
6. I therefore find that the conviction was safe and the sentences meted out to the 1<sup>st</sup> and 2<sup>nd</sup> accused were lawful. However, I have come to the conclusion that the sentence already served by the Appellant is sufficient. She was sentenced to serve 2 years imprisonment on 15/9/2017 and has already served substantial part of it. I reduce the sentence to the period already served.
7. The appellant is set at liberty forthwith unless otherwise lawfully held.

**Judgment delivered dated and Signed at Garsen on 18<sup>th</sup> day of September, 2018.**

.....

**R.LAGAT KORIR**

**JUDGE**

**the presence of**

Pacho Court Assistant

Appellant in person

Mr. Kasyoka for the Respondent