



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 202 OF 2015**

**(An appeal from the conviction and sentence by F. Kyambia (PM) in Sirisia**

**CrC No. 1034 of 2015)**

**ERICK MUNYELEKWA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

[1]. **ERICK MUNYELEKWA** (the appellant) was convicted on his own plea of guilty for the offence of entering into a dwelling house with intent to commit a felony C/Sec. 305 (1) of the Penal Code and sentenced to serve 5 years imprisonment.

The particulars of the charge were that on the night of 2<sup>nd</sup> and 3<sup>rd</sup> October, 2015 at **MULUKHA** village in Bungoma West Sub-county, he entered into the dwelling house of **SELINA NELIMA WANASWA** from where he stole 50Kgs of Maize.

[2]. The complainant was the appellant's mother and had gone away to **SANGALO** leaving the appellant and other children in their house. Upon her return on 03/10/2015 she realized that 50Kgs of maize was missing from the store. She made inquiries and learnt that the appellant had sold the maize to a store in **SIRISIA** town. She was able to trace 32Kgs of the maize which had been sold to one **DAVID SITUMA**, and the appellant led them to the recovery of another 18Kgs which he had stored. The recovered maize was produced in court as exhibit.

A social inquiry report dated 21/10/2015 presented to the trial court indicated that the appellant was of questionable character for whom stealing and creating disturbance formed a prominent part of his profile. The appellant's appeal is on the 5 years sentence only and prays for leniency.

[3]. **MR. AKELLO** on behalf of the State left the issue to the court's discretion. The value of the maize was not given but I take judicial notice that currently 90Kgs bag of maize sells for about Kshs.2,800/=, so a 50kg bag should be about Kshs.1,200/=. This was an offence committed within the family set up. The appellant has served 22 months of the sentence and taking into account the quantity and value of maize and the circumstances under which the offence was committed it is my view that 5 years imprisonment was rather harsh. He has served one year plus, which in my opinion is adequate punishment. Consequently the 5 years sentence is set aside and is substituted with 22 months imprisonment which he has already served.

He shall be set at liberty forthwith unless otherwise lawfully held.

**Delivered** and dated this 14<sup>th</sup> day of **July**, 2017 at **Bungoma**.

**H. A. OMONDI**

**JUDGE**