

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA-BAY

CRIMINAL APPEAL NO. 129 OF 2014

BETWEEN

MICHAEL STEPHEN OKINDA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence of Hon. N. Kariuki, RM in Homa Bay Chief Magistrates Court Criminal Case No. 1242 of 2011 dated 24th May 2013)

JUDGMENT

1. The appellant, **MICHAEL STEPHEN OKINDA**, was charged with the offence of house breaking and stealing contrary to **section 304(1)(b)** and stealing contrary to **section 279(b)** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. He was convicted and sentenced to 5 years imprisonment.
2. The appellant's appeal is against the sentence. In the petition grounds filed on 11th November 2014, he states that he has fully reformed and that he will shun bad company, that he has learned tailoring skills in prison and that his sentence should be reconsidered to enable him go back to society.
3. Sentencing is essentially the discretion of the sentencing court. An appellate court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor or that it failed to take into account a relevant factor, or that it applied a wrong principle or short of these the sentence is so harsh and excessive that an error of principle must be inferred.
4. The main consideration the learned magistrate took into account was that the appellant was a repeat offender. It is not in dispute that the appellant was charged and convicted of the offence of house breaking and stealing in **Homa Bay Chief Magistrates Court Criminal Case No. 1243 of 2011** where he was sentenced to 5 years imprisonment. His appeal against conviction and sentence in **Homa Bay HCCRA No. 42 of 2014** was dismissed.
5. Given the fact that the appellant was a repeat offender, I decline to interfere with the sentence. It is affirmed and the appeal is therefore dismissed.

DATED and DELIVERED at HOMA BAY this 9th June 2015.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.