



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 282 OF 2013**

**NZAU MUSYOKA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 334 OF 2013**

**NTHIWA MUTISYA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in **Kithimani Principal Magistrate's Court Criminal Case No. 752 of 2013** by*

***Hon. D. G. Karani, PM on 22/10/13)***

**JUDGMENT**

1. **Nzau Musyoka (1<sup>st</sup> Appellant)** and **Nthiwa Mutisya (2<sup>nd</sup> Appellant)** respectively were jointly charged with the offence of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the Penal Code. ***Particulars of the offence being that on the night of 16<sup>th</sup>/17<sup>th</sup> day of October 2013 at Kangemi market within Machakos County jointly with others not before court, broke and entered the dwelling house of Henry Ngumbi with intent to steal therein and did steal, 1 sack of maize, 1 sack of beans, clothes and other assorted house hold items valued at Kshs.140,000 the property of Henry Ngumbi.***
2. They pleaded guilty to the charges at the outset and were sentenced to serve six (6) years imprisonment on each limb of the charge.
3. Being dissatisfied with the sentences imposed they now mitigate on sentence. The state through Mrs. Abuga, Learned State Counsel opposed the appeal arguing that the sentence imposed was proper and within the law.
4. In his mitigation the 1<sup>st</sup> appellant stated that his health has deteriorated due to severe illness. He is the sole breadwinner as his parents died when he was young and he has reformed.
5. The 2<sup>nd</sup> appellant on the other hand stated that he was involved in an accident prior to commission of the offence and he suffers from chest problems. His elderly grandmother who takes care of his two (2) children is now blind and he has undergone rehabilitation.

6. This being the first appeal, I am enjoined to scrutinize the record and come up with my own conclusions.
7. It is settled that an appellate court will not interfere with the exercise of discretion when it comes to sentencing. It will only do so if it is satisfied that the sentence imposed was manifestly so excessive to amount to an injustice (**See Ogallo S/O Owoura vs R (1954) 21 EACA 126**).
8. The sentence provided for the 1<sup>st</sup> and 2<sup>nd</sup> limb of the charges is ten (10) and fourteen (14) years imprisonment respectively. The appellants admitted the charges at the outset hence saved judicial time. They were first offenders. They have served sentence for a period of one (1) year and nine (9) months. They have expressed remorse. In the circumstances, I do reduce their sentences to the term served. They will be released forthwith unless otherwise lawfully held.
9. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 7<sup>TH</sup> day of JULY, 2015.**

**L. N. MUTENDE**

**JUDGE**