



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 114 OF 2011**

**DANIEL MUTUA ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From original Conviction and Sentence in Criminal Case No. 96 of 2010 of the Senior Resident Magistrate's Court at Taveta – Hon. Ndegwa - SRM)**

**JUDGMENT**

The Appellant herein was Convicted and Sentenced to Eight (8) years imprisonment for the offence of burglary and stealing contrary to section 304 (2) and 279 (b) of the Penal Code.

The particulars being that on the night of 7th day of March and 8th March, 2010 at unknown time in Bahati Village within Taita-Taveta County, jointly with others not before the Court broke and entered the dwelling house of Meshack Biwott with intent to steal therein and did steal therein a plastic stand, 5 plates, 2 cups, 3 aluminium sufurias, a pair of slippers and 500 grammes white toss the property of Meshack Biwott all of the value of Ksh, 1,200/=.

His grounds of appeal are largely on the issue of Sentence. His submissions are based on mitigation factors.

The appellant was not a first offender. He admitted two previous Conviction for the offences of house breaking and stealing in which he was Sentenced to two years imprisonment. In the present case he was Sentenced to Eight (8) years imprisonment for burglary and stealing which carries a maximum Sentence of Ten (10) years.

I find in the circumstances of this case where the value of the property was Ksh. 1,200/= the Sentence of Eight (8) years imprisonment is harsh even for a repeat offender.

The Sentence of Eight years imprisonment on each limb is reduced to Four (4) years imprisonment on each of the two limbs. The Sentence to run concurrently. The appeal succeeds to that extent only.

Judgment delivered dated and signed this **13th** day of **February, 2014**.

.....  
**M. MUYA**

**JUDGE**

**13TH FEBRUARY, 2014**

**In the presence of:-**

Learned State counsel Miss Mwaura

The Appellant present

Court clerk Musundi