



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 112 OF 2013

MWACHITI KAPHILINZI APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 618 of 2013 of the Principal Magistrate's Court at Kwale – **Hon. Aminga - SRM**)

JUDGMENT

MWACHITI KAPHILINZI hereinafter referred to as the Appellant was Convicted and Sentenced to four (4) years imprisonment for the offence of shop breaking contrary to section 304 (1) (b) and stealing contrary to section 279 (B) of the Penal Code.

The particulars were that:-

“On 29th day of May, 2013 at unknown time at Kinango township – Kwale County with others not before the Court broke and entered a building used as a shop of SAID KAJAMBO and stole one Desk top, one digital camera, credit cards, memory cards, Ksh. 185 all of the value of Ksh. 344,085/= the property of SAID KAJAMBO”.

The appellant pleaded guilty to the charge and was Convicted on his own plea. His appeal is on Sentence only.

It is noted that the Appellant was not treated as a first offender as he had been Convicted in Criminal Case No. 619 of 2013 and Sentenced to eighteen (18) months imprisonment for a similar offence.

The offence in which he was Convicted carries a maximum Sentence of fourteen (14) years imprisonment. The Sentence of four (4) years imprisonment meted out on him cannot be said to be harsh and excessive in the circumstances of this case. This appeal has no merit and its disallowed.

Judgment delivered dated and signed in open Court this **5th** day of **March, 2014**.

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M. MUYA

JUDGE

5TH MARCH, 2014

In the presence of:-

Learned State Counsel Miss Mutua

The appellant in person present

Court clerk Musundi