



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 182 OF 2012**

STEPHEN MUNYAKA KIMERA ..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From original Conviction and Sentence in Criminal Case No. 879 of 2011 of the Principle Magistrate's Court at Voi – Hon. Nyakundi – S.R.M.)*

**JUDGMENT**

The Appellant mentioned herein above was Convicted and Sentenced to five (5) years imprisonment for the offence of store breaking and committing a felony contrary to section 306 (a) of the Penal Code.

The particulars are that:-

***“On the 4th day of December, 2011 at Kasigau Taita-Taveta County he broke and entered the store of WILLIAM NDORO MAKAGHA and did steal from therein a motor cycle Registration Number KMCR 760L make Sumo 150 Alloy valued at Ksh. 75,000/= the property of WILLIAM NDORO MAKAGHA”.***

The Accused pleaded guilty to the charge which was read to him in Swahili language which he told the Court he understood. The facts were read to him and he stated that they were true. He was subsequently Convicted on his own plea of guilty. Before Sentence the matter was referred for a probation report.

In his amended grounds of appeal he states that he was pushed by police to enter a plea of guilty.

Secondly, that the facts were read to him in English language which he did not understand.

Thirdly that nothing was recovered from him.

On the first ground. There is nothing to show that he was misled by police to enter a plea of guilty. At the time of plea he did not tell the Court that he had been instructed to enter a plea of guilty by police.

On the second ground, there is ample evidence from the record of proceedings that the language used was Swahili.

As for the third ground wherein he claims that nothing was recovered from him. The facts clearly show that the Accused was arrested at Chungu Unga area and the motor cycle was recovered and he was

escorted along with it to Voi Police Station. The said motor cycle was later produced as exhibit in Court.

I find his Conviction was safe. On the issue of Sentence. The offence he was charged with carries a maximum Sentence of seven (7) years. It is noted that he had been treated as a first offender and the stolen item was recovered. The imprisonment term of five(5) years is hereby reduced to three (3) years imprisonment. In the event that he has finalized the three (3) years to be set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed in open Court this **4th** day of **March, 2014**.

.....

**M. MUYA**

**JUDGE**

**4TH MARCH, 2014**

**In the presence of:-**

Learned State Counsel Mr. Ayodo

The appellant present in person

Court clerk Musundi