



**IN THE HIGH COURT AT HOMA BAY**

**CRIMINAL APPEAL NO. 5 OF 2014**

**BETWEEN**

**VICTOR OUMA OMOLO ..... PLAINTIFF**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Being an appeal from the original conviction and sentence in Criminal Case No. 1578 of 2013 of the Chief Magistrates Court at Homa Bay, Hon. P. Mayova dated 20<sup>th</sup> December 2013)***

**JUDGMENT**

1. The appellant, **VICTOR OUMA OMOLO**, was charged and convicted of the offence of Bar breaking and committing a felony contrary to **section 306(a)** of the ***Penal Code (Chapter 63 of the Laws of Kenya)***. The particulars are that on 19<sup>th</sup> December 2013, at Homa Bay Township within Homa Bay County, he broke into and entered a building, Club 28, a bar of one CON and did steal therefrom 12 spirits wine viceroy and cash amounting to Kshs.3,240/= all valued at Kshs.12,840/= being the property of CON.
2. He pleaded guilty and was convicted and sentenced to 5 years imprisonment. He now appeals against conviction and sentence.
3. As the first appellate court I have revised the proceedings, and I am satisfied that the proceedings were conducted in a language he understood, the facts were read to him and they disclosed an offence and he consequently pleaded guilty. The plea was therefore unequivocal and it is upheld.
4. As regards the sentence, the offence under **section 306(a)** of the ***Penal Code*** comprises two offences; That of breaking into a building and that of stealing (see ***Reuben Nyakango Mose and Another v Republic CA Kisumu Civil Appeal No. 606 of 2010 [2013]eKLR***). The accused ought to have been sentenced on both limbs in the circumstances.
5. The accused was a first offender and he pleaded guilty. According to the sentencing notes, the learned magistrate emphasized the need for a deterrent sentence since the crime was prevalent in the area. The issue of deterrence seems to have been overemphasized over the personal circumstances of the appellant.
6. In the circumstances, I will interfere with the sentence, quash the same and substitute it with the following:
  - a. Limb (a) for bar breaking – 2 years in prison

- b. Limb (b) for stealing – 2 years in prison
- c. Both sentences shall run concurrently from the date of conviction.

**DATED and DELIVERED at HOMA BAY this 17th day of July 2014**

**D.S. MAJANJA**

**JUDGE**

**Mr Obach instructed by Orego and Odhiambo Advocates for the appellant.**

**Ms Andabwa, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.**