



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 122 OF 2012

DAN OMONDI ALLOGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

(From original conviction and sentence in Criminal Case number 524 of 2012 of the Principal Magistrate's Court Bondo)

The appellant herein was charged with the offence of House breaking contrary to section 304 (1) and Stealing contrary to section 279 (b) of the penal code.

The particulars are that on the 18th day of July 2012 at Nyawita sub location in Bondo district within Siaya county broke and entered the dwelling house of **Linet Adhiambo** with intent to steal and did steal 32 kilograms of beans and cash money of Kshs. 13,000/= the property of Linet Adhiambo all valued at Kshs. 15,560/=.

The appellant did plead guilty and was sentenced to serve 7 years imprisonment. He has appealed against the said sentence but the grounds as per the petition of appeal dated 3rd October 2012 are purely on mitigation.

When the appeal came up for hearing the appellant readily accepted the offence. He however told the court that he felt the sentence was excessive in the circumstances. He said that he was an orphan with two children. His wife was deceased and the children were now staying with their grandmother.

The state opposed the said appeal. Mr. Sang told the court since he had readily admitted the charge under section 348 of the Criminal Procedure Code he is precluded from making further plea to this court.

The issue of sentencing though discretionary must always be done within the law. The maximum sentence prescribed by law in the circumstances obtaining herein is seven (7) years.

On this score therefore, the trial court was perfectly in order. I note from the facts as read out that what was apparently proved by the prosecution was 32 kilograms of beans and not the cash.

I have considered the mitigation herein by the appellant. Taking into totality the facts herein, I shall exercise my discretion and reduce the sentence herein from seven (7) years to two and half (2½) years custodial sentence against the appellant which shall run from the date of sentence at lower court.

Orders accordingly.

Dated, signed and delivered at Kisumu this 4th day of July, 2013.

**H.K.
JUDGE**

CHEMITEI

In the presence of:

.....**for the state**

.....**for the appellant**