

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

REVISION NO. 14 OF 2013

(Revision arising from the decision of [S.N. MWANGI]

dated 13.9.2013 in the Vihiga Senior Principal

Magistrate's Court in Criminal Case No. 813 of 2013)

PHILEMONA A. MUKHAYA APPLICANT

V E R S U S

REPUBLIC RESPONDENT

RULING ON REVISION

The applicant was charged with the offence of burglary contrary to **section 304(1)** and stealing contrary to **section 279(b)** of the **Penal Code**. The particulars of the offence were that the applicant and one Jackton Buluku *on the night of 19th August 2013 at Ebusiloli village in Vihiga District within the Western Province jointly broke and entered the dwelling house of ROMONA CALEB STIAMBARE with intent to steal therein and did steal from therein one turkey, seven hens the property of the said ROMONA CALEB STIAMBARE the said valued at KShs.10,200/=.*

The applicant pleaded guilty and was sentenced to serve 2 year's imprisonment without an option of a fine. The case against his co-accused proceeded but was later withdrawn by the complainant. The matter was brought for review as the trial court only convicted the applicant on the 1st limb of stealing of stealing but seems to have forgotten the 2nd limb. The charge shows that the item stolen was a turkey and 7 hens valued at KShs.10,200/=. The applicant was sentenced on the 21.8.2013 and has been in prison since that time. I do hereby review the sentence to 3 months imprisonment for the count of burglary and 3 months imprisonment for the count of stealing. The alternative charge of handling stolen goods contrary to **section 322(1)** of the **Penal Code** was just an alternative and the conviction on the main count is sufficient. The sentence of the trial court is therefore reviewed to 3 months imprisonment for both limbs of the charge and the sentence shall run concurrently.

Delivered, dated and signed at Kakamega this 9th day of October 2013

SAID J. CHIEMBWE

J U D G E