



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL APPEAL NO. 219 OF 2011**

*(Appeal against the judgment of [M.I.G. MORANGA, SRM] dated 28.9.2011 in the Chief Magistrate's Court at Kakamega in Criminal Case No.1878 of 2011)*

**WINSTONEE MILIMO ..... APPELLANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

The appellant was charged with the offence of house breaking contrary to **section 304(1)(b)** and stealing contrary to **section 279(b)** of the **Penal Code**. The particulars of the offence were that the appellant *on the 24<sup>th</sup> day of September 2011 at around 12.30 Hrs. at Shirere sub-location, Municipality Division in Kakamega District of Western Province broke and entered the dwelling house of ATHANAS MUSAMBAI and stole one black and white television make Panasonic valued at KShs.3,500/= the property of the said ATHANAS MUSAMBAI.*

The appellant pleaded guilty to the charge and was sentenced to serve 3 years for the offence of house breaking and 3 years for the offence of stealing. The sentence was to run concurrently. His grounds of appeal are that the sentence is excessive and he ought to have been put on community service order. The appellant filed written submissions which is expounding on the harshness of the sentence. Mr. Okoth, State Counsel, opposed the appeal and submitted that the sentence was fair under section 304(1)(b) the maximum sentence is 7 years.

The main issue for this appeal is the sentence. The stolen item was a black and white TV and it was recovered. The appellant pleaded guilty and asked for leniency. The appellant was sentenced on the 28.9.2011. He has now served a period of over 2 years. Since the appellant pleaded guilty the issue of conviction does not arise. On the issue of sentence I do find that the period the appellant has served is enough punishment for the offence. The appeal lacks merit and is hereby dismissed. The sentence is hereby reviewed to the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 9<sup>th</sup> day of October 2013

**SAID J. CHITEMBWE**

**J U D G E**