



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA**

Criminal Appeal 45 of 2009
(Appeal arising from Original Webuye SRM Cr. No.542 of 2009)

C.N.O.....APPELLANT

~VRS~

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant C N O was charged and convicted on his own plea of guilty by Webuye Senior Resident Magistrate for an offence of shop breaking and committing a felony contrary to section 306 (a) of the Penal Code. He was sentenced to serve four (4) years imprisonment. He appeals to this court against the sentence which he says is too harsh. He prays for a non custodial sentence pleading that he is only eighteen (18) years of age and is waiting to join university. He was sentenced to imprisonment at the time that he was only 17 years old.

The appeal was not opposed by the state. Mrs. Leting conceded to the appeal and asked the court to consider the educational needs of the Appellant and release him.

The Appellant was sentenced to imprisonment before he attained 18 years which was not lawful. The court had a duty to observe the Appellant and confirm his age by way of age assessment. This would have resulted to an alternative sentence derived from the options provided by the law. He has already served ten (10) months which is an illegal sentence. I do not find it proper to place him on probation. The period he had served in prison at his young age is more than enough. I agree with the state that the Appellant's educational needs ought to be considered. If he continues with his education, it is for his own good and for the good of this nation.

The sentence of four (4) years imprisonment is hereby set aside. The Appellant is released forthwith unless otherwise lawfully held.

**F. N. MUCHEM
JUDGE**

Dated, Delivered and Signed at Bungoma this 2nd day of March, 2010.
In the presence of the Appellant and the state counsel Mrs. Leting.