

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 20 of 2008

PATRICK KAMANJA KABIRU.....APPELLANT

VERSUS

**REPUBLIC.....
RESPONDENT**

JUDGMENT

PATRICK KAMANJA KABIRU, was in Nyahururu PM Criminal Case No. 3584 of 2007 charged with breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code. The particulars of the charge were that on 29th November 2007 at Ol Kalou Township in Nyandarua District within Central Province, the Appellant broke and entered the Full Gospel Church Ol Kalou and stole therefrom cash of Kshs.1,700/-, one panasoni radio cassette, one digital wall clock, one wheel barrow, one secatiur, one harmer, one panga, one axe, one thermos flask, one multi plug, one roll speaker cable, six basins, four buckets, one sufuria, nine cups and 14 plates all valued at Kshs.18,795/- the propertt of the Full Gospel Church Ol Kalou.

He was in the alternative also charged with handling stolen property contrary to Section 322(2) of the Penal Code. In that count it was alleged that on the same day at Manyatta village in Nyandarua District within Central Province otherwise then in the cause of stealing the appellant dishonestly received or retained one panasonic radio cassette, one digital wall clock, one wheel barrow, one secatiur, one harmer, one panga, one axe, one thermos flask, one multi plug, one roll speaker cable, four plastic basins, three buckets, one sufuria, nine cups and 14 plates knowing or having reason to belief them to be stolen. He denied the main charge but pleaded guilty to the alternative charge on which he was convicted and sentenced to three years imprisonment. He has appealed against that sentence.

Presenting his appeal, the Appellant submitted that for the ten months he has been in prison, he has suffered a lot and will never commit another offence. He said he is a widower with one son who is now in the care of his sisters. He pleaded for leniency. Mr. Mugambi for the state urged me not to disturb the sentence of three years imprisonment as the alternative charge that the Appellant pleaded guilty to carries a maximum sentence of 14 years imprisonment.

Having considered the matter I agree with Mr. Mugambi that the sentence of 3 years imprisonment against a term of 14 years imprisonment is quiet lenient. The Appellant is an able bodied man who should have found some lawful means of earning a living and not resorted to crime. I therefore find no merit in his appeal and the same is accordingly dismissed.

DATED and delivered at Nakuru this 3rd day of October, 2008.

D. K. MARAGA

JUDGE