



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**  
**Criminal Appeal 182 of 2002**

**BENSON MITOBIO GITAU.....APPELLANT**

**Versus**

**REPUBLIC.....RESPONDENT**

**Criminal Appeal 183 of 2002**

**SIMON KIMANI MACHARIA.....APPELLANT**

**Versus**

**REPUBLIC.....RESPONDENT**

**(Appeal from the judgment of P. Mwangulu District Magistrate I dated 25th February, 2001 in Criminal Case No. 176 of 1999 in the District Magistrate's Court at Kigumo)**

**JUDGMENT**

The two Appellants were among five accused persons jointly charged with the offence of store breaking and stealing contrary to Section 306(a) of the Penal Code. They were alleged to have broken into the store of Irati Coffee Factory and stolen a number of items to the total value of Ksh.123,600/= between 27th February, 1999 and 28th February 1999. They faced an alternative count of failing to prevent the commission of a felony contrary to Section 392 of the Penal Code. But having been convicted on the first count, the trial magistrate said nothing about the alternative count.

The two Appellants were employed as watchmen at the factory and the First Appellant was on duty before he handed over to the Second Appellant during the time of the breaking and stealing. I have read the evidence recorded by the trial magistrate. I have read his judgment. I have considered what was said on both sides during the hearing of this appeal. I find there was sufficient evidence to sustain the conviction of each Appellant. The convictions were therefore proper and I dismiss the appeal of each Appellant against his conviction.

On the sentence of five years imprisonment plus three strokes of the cane, I do hereby set aside the three strokes of the cane and reduce the five years to such a period as will enable each Appellant be released tomorrow 2nd July, 2005.

***Dated, delivered and signed at Nyeri this***

***1st day of July, 2005.***

**J. M. KHAMONI**

**JUDGE**