

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE
CRIMINAL APPEAL NO.950 OF 1998

*(From Original Conviction and Sentence in Criminal Case No.68360
of 1997 of the Principal Magistrate's Court' s at Kibera)*

IBRAHIM SARONI NDIKAAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

J U D G M E N T

The appellant was charged and convicted with the offence of burglary and stealing contrary to section 304 (2) and 279(e) of the Penal Code. He was aged 17 years. The Trial Magistrate ordered for probation report. Which was submitted but was unfavorable. The Trial Magistrate committed him to Kamiti YCTC for a period of 4 months. He served for 3 months and absconded. He committed a subsequent offence of robbery with violence and was charged in Criminal Case No.4273 of 1998. He was taken before the Trial Magistrate who revoked the probation order and sentenced him to 3 years imprisonment with 3 strokes of the cane. For each limb of the offence sentence to run concurrently. He now appeals against that decision.

The appeal is against sentence only. Notwithstanding that the appellant has been charged with a subsequent offence but for the present offence he was treated as a first offender. In the circumstances sentence was on the higher side.

The appeal against sentence is allowed and the sentence of 3 years with 3 stroked of the cane for each limb of the offence is set aside and reduced to the period he has served. On corporal punishment I order that the appellant to receive 1 stroke of the cane for each limb of the offence, and he be released after the said corporal punishment unless otherwise for any other lawful cause. To that extend this appeal succeeds. Otherwise the appeal is dismissed.

Dated and Delivered at Nairobi this 27th day of October, 1999

J.L.A. OSIEMO

J U D G E