



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAKURU**

**Criminal Appeal 52 of 1994**

**SAMWEL AMBUNYA INGUTIA.....**  
**APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

**(Appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Mr. Justice D.M. Rimita) dated 10<sup>th</sup> day of January, 1994**

**IN**

**H.C.C.R.A. NO. 431 OF 1993)**

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**JUDGMENT OF THE COURT**

The sum total of the appellant's sentence amounts to 12 years imprisonment together with 96 strokes of corporal punishment. When the appellant appealed to the superior court against the excessiveness of that sentence the said appeal was summarily dismissed under section 352 (2) of the Criminal Procedure Code. The appellant had been convicted by the Senior Resident Magistrate's Court at Nakuru on three counts of buglarly and stealing contrary to sections 304(2) and 279(b) of the Penal Code and sentenced to 2 years imprisonment together with 8 strokes of corporal punishment on each limb. The sentences were ordered to run consecutively thus making the sum total of 12 years imprisonment together with 96 strokes of corporal punishment as is mentioned above. The sentence in the circumstances of the case before the trial magistrate was certainly manifestly excessive. We think that the prison sentences should have been ordered to run concurrently and the corporal punishment on each limb should have been 2 strokes of the cane on each limb. Accordingly, we consider that the summary dismissal of the appellant's appeal to the superior court was wrong. In the result, we allow this appeal and order that the appellant's sentences imposed on him on each limb of the three counts of burglary and stealing as are narrated above are to run concurrently and the strokes of corporal punishment imposed on him on each limb are reduced to 2 which means that the appellant will now serve a total of 2 years imprisonment together with 12 strokes of corporal punishment.

Dated and delivered at Nakuru this 25<sup>th</sup> day of September, 1995.

J.E. GICHERU

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**