

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

Criminal Appeal 1 of 1991

ALI SHABAN APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a judgment of the High Court of Kenya

Mombasa (Mr Justice J.F. Shields) dated 7th September, 1990

In

H.C.CR. APPEALS NOS 417, 498, 496 & 499 OF 1989)

JUDGMENT OF THE COURT

As the appellant had pleaded guilty at his trial he had a right of appeal against sentence to the High Court which he duly exercised. The judge reduced the number of strokes to one stroke on each limb. So the present appeal to us is on sentence on which we would normally have no jurisdiction if the sentence on which we would normally have no jurisdiction if the sentence is lawful. In Criminal case NO 989/88 on a charge of housebreaking and stealing contrary to section 304 (1) (a) and section 279(b) of the Penal Code, the Magistrate wrongly awarded strokes on both limbs which he should not have done. To this extent that sentence was unlawful and this gives us jurisdiction to deal with the matter. We therefore set aside the strokes imposed for housebreaking in Criminal Case NO 989/88. In all the appellant will now receive 10 strokes of the cane. To that extent only the appeal succeeds.

Dated and delivered at Mombasa this 21st day of January, 1992.

J.M. GACHUHI

JUDGE OF APPEAL

R.O. KWACH

JUDGE OF APPEAL

R.S.C. OMOLO

JUDGE OF APPEAL