



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL APPEAL NO 92 OF 1987**

**LINGE.....APPELLANT**

**V**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was convicted of housebreaking contrary to section 304(1) of the Penal Code and stealing from the dwelling house contrary to section 279(b) of the said Code. He was sentenced to 2 years imprisonment.

The appellant pleaded guilty to the charge. The stolen door of the complainant was found in the house of the appellant. On admitted facts, the appellant was properly convicted.

In mitigation, the appellant said that the complainant was his employer and prayed for leniency.

In his memorandum of appeal, the appellant pleads that he stole out of necessity to provide for his family and that he wishes to be out to pursue claim against the person who killed his father.

The appellant is a first offender. The stolen door was recovered. He pleaded guilty.

The magistrate erred in awarding omnibus sentence of two years for two distinct offences namely house breaking and stealing. He ought to have been sentenced on each limb of the charge. Moreover, the offence of stealing from dwelling house carried mandatory corporal punishment. It is therefore necessary to revise the sentence.

Having regard to all the circumstances, the sentence is revised so that he shall undergo a sentence of 6 months imprisonment for housebreaking and 6 months for stealing together with one stroke of corporal punishment.

The prison sentences shall run concurrently.

These are the orders of the court.

**May 15, 1987**

**ABDULLAH**

**JUDGE**