

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPEAL NO. E025 OF 2025**

**JOHN MUTUA NTHUKU .....**

**.....APPELLANT**

**VERSUS**

**REPUBLIC**

**.....RESPONDENT**

(Being an appeal against the Sentence by Hon. V. Ochanda (SRM) in the  
Machakos Chief Magistrate's Criminal Case No. E254 of 2024 dated 3<sup>rd</sup>  
September 2024)

JUDGEMENT

The Appellant lodged this appeal vide the petition of Appeal which is undated. The matter came up for mention for directions severally and on 20/1/2026 this court sought for time to peruse the file since the Appeal is only on sentence.

On 4/2/2026 the matter came up for mention for directions but unfortunately the court had not perused the lower court file record.

This court has now had the chance to peruse through the lower court file record and has established that the Appellant was charged with the offence of Burglary contrary to **Section 304(2)** and Stealing contrary to **Section 279 (b) of the Penal Code**.

The charge sheet as drawn compressed the offences of Burglary and Stealing into a single charge/count.

The record shows that the Appellant pleaded to one charge but the court proceeded to sentence the accused to serve five (5) years on each limb of the offence.

The record further shows the Appellant pleaded guilty but before that, the court did not explain to him the consequences of pleading guilty and the nature of sentence that was likely to be imposed against him.

I find that the manner in which the plea was taken infringed on the Appellant's right to a fair trial under **Article 50(2) of the Constitution**. The same was equivocal. I further find that the sentence was therefore erroneously imposed on the Appellant.

Accordingly, I allow the appeal, quash the conviction and set aside the sentence.

The appellant is forthwith directed to be released from prison unless otherwise lawfully held.

This file is closed.

JUDGEMENT WRITTEN, DATED & SIGNED AT MACHAKOS THIS 5<sup>TH</sup> FEBRUARY, 2026

**NOEL I. ADAGI  
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 5<sup>TH</sup> FEBRUARY, 2026

**In the presence of:**

