



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**CRIMINAL APPEAL NO 31 OF 2019**

**FRANKLINE KIPSANG CHESIRE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an appeal from the original sentence of Hon V.O. Amboko,***

***RM, dated 13<sup>th</sup> May 2019 in Criminal Case No 625 of 2018 in the Senior***

***Principal Magistrate's Court at Kabarnet, Republic v Frankline Kipsang Chesire)***

**JUDGMENT**

In his petition to this court the appellant has challenged his sentence of three years' imprisonment in respect of the offence of stealing by servant contrary to section 281 of the Penal Code (Cap 63) Laws of Kenya.

Mr. Mong'are for the respondent has left the issue of sentence to the court to decide.

In his oral submissions in this court, the appellant submitted that he is only left with about four months to complete his sentence. He has therefore urged the court to order for his release from prison.

I find that the appellant was arrested on 23/7/2018. Thereafter he was released on bail on 7/8/2018. It is clear that the appellant was in pre-trial custody for fourteen days.

In sentencing the appellant, the trial court did not take into account the fourteen days the appellant had been in custody. The court was mandatorily required by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya to take that period into account when sentencing the appellant. The failure to do so amounts to an error of law that entitles this court to interfere with the discretion exercised by the trial court.

In the circumstances I find that the interests of justice have been served for the period the appellant has been in prison.

In the premises, the appellant is hereby ordered released forthwith unless he is held on other lawful warrants.

**Judgment dated, signed and delivered in open court at Kabarnet this 27<sup>th</sup> day of January 2021.**

**J M BWONWONG'A**

**JUDGE**

In the presence of

Mr. Kemboi Court Assistant.

Appellant in person present.

Mr. Mong'are for the Respondent.