



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.82 OF 2017**

**LESIT, J.**

**JANE GATUYA MUGWERU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal arising from the decision of Hon. S. Muchungi RM in Nairobi CM Criminal Case No.1187 of 2011 delivered on 14<sup>th</sup> July 2017)*

**JUDGMENT: RULING ON SENTENCE**

1. This is a ruling on sentence arising from orders made by Kimaru, J. in his judgment in this appeal. The Appellant has been out on bond during the pendency of this appeal, since 26<sup>th</sup> July, 2017. I will get to that later.
2. The Appellant, Jane Gatuya Mugweru, was charged before Chief Magistrate's Court at Milimani with various offences under the Penal Code being one count of the offence of **theft by servant** contrary to **Section 281**, one count of **forgery** contrary to **Section 349**, two counts of **uttering false documents** contrary to **Section 353**, two counts of **stealing** contrary **Section 275** and finally one count of **handling stolen property** contrary to **Section 323**.
3. The Appellant was convicted of five out of the seven counts i.e. count 1, 2, 5, 6 and 7. She was sentenced to serve three (3) months imprisonment in the first count. In respect of the remaining four counts, she was sentenced to serve two (2) years imprisonment on each count. The sentences were ordered to run concurrently.
4. The Appellant filed an appeal before this court against her conviction and sentence. Her appeal was heard before Kimaru J. who upheld her conviction in the five counts in a judgment dated 4<sup>th</sup> February 2020. With regard to sentence, the Judge ordered for a probation report to be prepared so as to determine whether the Appellant is suitable to serve a non-custodial sentence.
5. Consequently, upon issuance of the said orders, a report by the Probation Officer was filed on 5<sup>th</sup> May 2020. The report is favourable and shows that the Appellant is suitable for a non-custodial sentence. A second Pre-sentence Report was filed on 7<sup>th</sup> June, 2021.
6. Mr. Gachie for the State and Mr. Chebii for the Appellant appeared before me on the 12<sup>th</sup> April, 2021. The court was informed that the Probation Officer's Report was on record. Mr. Chebii on request was given time up to 26<sup>th</sup> April, 2021 to file and serve his submissions on Mitigation. This was done, and on 26<sup>th</sup> April, 2021 ruling on sentence was scheduled for 11<sup>th</sup> May, 2021. There has been a delay in delivery of the ruling due to developments in the court.
7. Mr. Chebii in mitigation on behalf of his client urged the court to give her a probation sentence. He submitted that the Appellant was remorseful for the offence and was willing to compensate the complainant or victim in this case. He urged the court to consider this was the first time the Appellant has been in conflict with the law.
8. Two Pre-sentence Reports were filed herein by Ms. Kanyangi, the first dated 5<sup>th</sup> May, 2020 and the second dated 7<sup>th</sup> June, 2021. In her first report, Ms. Kanyangi, Probation Officer confirms that the complainant institution had a meeting with the Appellant, which she arranged on the latter's request. The meeting ended with an agreement that the Appellant should pay back what was lost at the rate of 5000/ per month. The Institution also decided to forgive the Appellant for what she had done.
9. In the second report, the important part is the confirmation that the Appellant had started to make the repayments by depositing the first

instalment, and promising to continue doing the same.

10. Having considered the Appellant's mitigation given by counsel on her behalf, and the two Probation Officer's Reports, I am satisfied that the Appellant should be given a chance to serve a non-custodial sentence. I noted that the Appellant indicated to the Probation Officer that she will be willing to serve a Probation term. In the circumstances, I will sentence the Appellant to a probation term of three years from the date of delivery of this ruling. During this period she shall be under the Supervision of a Probation Officer. She is cautioned to adhere to the following terms:

**1). The Appellant should observe the following**

- a) The Appellant is warned that Probation sentence is not an acquittal or discharge but a legitimate punishment and therefore she should be careful to diligently serve the sentence as required by the court and probation.**
- b) She will obey the Probation Officer supervising her and adhere to all the conditions or terms set as part of that supervision.**
- c) She should be of good behavior and not commit any penal offence during the pendency of her sentence.**
- d) She should continue making payment to the complainant Institution on the schedule already agreed upon until payment in full.**

**2). The Appellant is warned that failure to abide by ANY of the terms under 1) above will result in the Appellant's arrest and committal to an imprisonment term.**

**DATED AT NAIROBI THIS 14<sup>th</sup> DAY OF JUNE 2021**

**LESIIT, J.**

**JUDGE**

**READ AND DELIVERED THROUGH TEAMS ON THIS**

**22<sup>nd</sup> DAY OF JUNE, 2021**

In the presence of

Kinyua Court Assistant present

Kirago For the State present

J. K. Gachie For the Appellant

**D.O. OGEMBO**

**Judge**

**22/6/2021**

**Court**

Read out also in presence of the appellant and Cpl. Mwaniki

(orderly).

**D.O. OGEMBO**

**Judge**

**22/6/2021**