



**REPUBLIC OF KENYA**

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

**HCCRA NO. 9 OF 2019**

**LABAN KIPRUTO .....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original conviction and sentence of the Principal Magistrate's Court at Kabarnet Cr. Case no. 394 of 2018 delivered on the day of by Hon. V. O. Amoboko, RM ]**

**JUDGMENT**

1. The appellant was convicted on a plea of guilty and sentenced to imprisonment for three years for the offence of stealing c/s 268 as read with 275 of the Penal Code.
2. The appellant's appeal sought a reduction of the sentence. There was delay in the preparation of the Record of Appeal and the appeal was admitted to hearing on 15/1/2020 and on 26/2/2020 set for hearing on priority basis on the 19/3/2020, when the case did not proceed on account of the partial closure of the courts in response to the CORONA virus outbreak.

***NCAJ Circular on Corona Virus-19***

3. However, in compliance with the direction of the Chief Justice as part of the measures adopted by National Council on the Administration of Justice (NCAJ) under its Plan to combat the threat of Corona Virus Disease - 2019 (COVID-2019) entitled ***Administrative and Contingency Management Plan to Mitigate COVID-19 in Kenya's Justice Sector*** issued on the 15<sup>th</sup> March 2020, in relevant part on decongestion of prisons as follows:

*"8. Judges in all stations will in the meantime review the deserving cases already identified by Prison Authorities and issue appropriate revision orders in an effort to decongest the prisons...."*

4. According to a ***List of Prisoners with pending Appeals as at 19/3/2020 and a balance of less than 6 Months***, the appellant is identified as one of two cases due for release with remission in under six months, on the 02 May 2020, which is barely a month away.

**5. Under section 348 of the criminal Procedure Code, the appellant, who pleaded guilty to the charge in the trial court, could only appeal from the legality or severity of sentence.**

6. As regards the sentence, and in accordance with the NACJ guidelines for decongestion of prisons, the court finds it appropriate pursuant to section 354 (3) (b) of the Criminal Procedure Code to review the sentence imposed on the appellant and reduce it to a sentence of imprisonment for the period already served so that the appellant may forthwith be released from custody in furtherance of the NCAJ's

decongestion measures.

**Orders**

7. There shall, therefore, be an order of the court directing the release of the appellant from custody, unless he is otherwise lawfully held.

*Order accordingly.*

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF MARCH 2020.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Kitilit, Prosecution Counsel for the Respondent.