



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL APPEAL NO. 58 OF 2019

PETER OLENANGURIS.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Senior Principal Magistrate's Court at Kabarnet Criminal Case no.496 of 2018 delivered on the 8th October, 2019 Hon. S. O. Temu, PM]

JUDGMENT

Introduction

1. The appellant was upon conviction for the offence of stealing contrary to section 268 as read with section 275 of the Penal Code, sentenced to two (2) years imprisonment from the 8th October 2019. The particulars of the offence were that the appellant had “*On the 7th day of June 2018 at 1335hrs, Marigat Township, Baringo South Sub-County, within Baringo County stole Ksh5300/= by withdrawing the same money from M-pesa account of one PETER KARANJA GATHIAKA.*”

Appeal from sentence

2. The appellant by his “**Mitigation**” Appeal now seeks a reduction of the sentence on appeal. At the hearing of the appeal, the appellant confirmed that he does not challenge the finding of guilty by the trial court.

3. Mr. Abwajo, Prosecution Counsel for the DPP does not object to the reduction of the sentence as requested by the appellant noting that the appellant has substantially served his two-year sentence, having been in actual custody for one (1) year two weeks as at the date of the Judgment, and is due for release on 8th February 2021.

Determination

4. The appellant has been in custody for one-year two weeks which is equal to substantial performance, with remission, of the two-year sentence (actual custody of one (1) year four (4) months) by the trial court. The general punishment for theft under section 275 as read with section 268 of the Penal Code is three (3) years and a sentence of two years for a first offender who steals a modest sum of money at Ksh.5,300/- is clearly on the higher side.

5. The court also accepts the obligation to assist in the implementation of the National Council for the Administration of Justice (NACJ) policy to decongest the Prisons during the COVID-19 pandemic. For that reason and as the appellant has substantially served the two-year sentence, the sentence shall be reduced appropriately.

Orders

6. Accordingly, for the reasons set out above, the court makes the following orders on the appellant's appeal herein:

1. The sentence imposed on the appellant is, pursuant to section 354 (3) (b) of the Criminal Procedure Code, reduced to the time that he has already served.
2. The appellant shall be released from custody forthwith.

Order accordingly.

DATED AND DELIVERED THIS 22ND DAY OF OCTOBER 2020.

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Mr. Abwajo, Prosecution Counsel for the Respondent.