



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NANYUKI**

**CRIMINAL APPEAL NO 125 OF 2017**

**DAVID MURITHI GITUMA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Appeal from original Sentence dated 3/10/2017 in Nanyuki CM Criminal Case No 480 of 2017– W J Gichimu, PM)***

**J U D G M E N T**

1. The Appellant in this appeal, **DAVID MURITHI GITUMA**, was convicted after trial of *stealing a motor cycle* contrary to **section 278A** of the **Penal Code**. On 03/10/2017 he was sentenced to three (3) years imprisonment. He has appealed only against that sentence. Learned prosecution counsel has opposed the appeal.

2. I have considered the written submissions of the Appellant as well as the oral ones of the learned counsel. The offence carried a maximum punishment of seven (7) years imprisonment. The Appellant got 3 years. It was a lawful sentence. The only thing I have to consider is whether the sentence was manifestly harsh or excessive in the circumstances of the case.

3. The only thing that the Appellant told the trial court in mitigation was a request that it takes into account the period he had been in custody during his trial. The court did so, noting that he had been in custody since 30/05/2017. The court also noted that he was a first offender and that the stolen motor vehicle was recovered. Nevertheless the trial court felt that the offence the Appellant stood convicted of was serious and imposed the sentence it did. This was an exercise of sentencing discretion. It has not been alleged or demonstrated that the court acted on a wrong principle, or that the sentence was manifestly harsh or excessive in the circumstances. I have no reason to interfere with it.

4. There is no merit in this appeal against sentence, and the same is hereby dismissed. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 10<sup>TH</sup> DAY OF APRIL 2019**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 11<sup>TH</sup> DAY OF APRIL 2019**