



**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEALS NOs 91 OF 2016 AND 33 OF 2017 (CONSOLIDATED)**

**(Appeal from original Conviction and Sentence in Kangema SRM Criminal Case No 436 of 2016 – D. M. Kivuti SRM)**

**1. AGNES WANJIKU NGERU**

**2. JOTHAM MUNENE NJERI.....APPELLANTS**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

1. The Appellants herein, **Agnes Wanjiku Ngeru** and **Jotham Munene Njeri**; were respectively the 2<sup>nd</sup> and 1<sup>st</sup> accused before the trial court. They pleaded guilty to the main count of **stealing** contrary to **section 275** of the **Penal Code**. It was alleged in the charge that on 17/11/2016 at about 16.00 hours at Kahuhia Girls High School within Murang'a County, they jointly stole 11 water taps (metallic ½ - inch) valued at KShs 8,800/00, the property of the said school. They were convicted after admitting the facts given by the prosecution. The Appellants were each sentenced to five (5) years imprisonment. They appealed against both conviction and sentence.

2. The 1<sup>st</sup> Appellant's plea was clearly equivocal. The facts as stated by the prosecution disclosed that the theft was committed by the 2<sup>nd</sup> Appellant alone. There was nothing in the facts to show that he was with the 1<sup>st</sup> Appellant; nor was any common intention disclosed. There was no indication that the 1<sup>st</sup> Appellant knew, or had reason to believe, that the water taps were stolen.

3. As for the 2<sup>nd</sup> Appellant, his plea was unequivocal. The facts narrated by the prosecution showed that he stole the water taps and went round trying to sell them until he was arrested. He fully admitted those facts.

4. As for the sentence meted out, the same was manifestly illegal. The maximum custodial sentence prescribed for theft under **section 275** of the Penal Code is three (3) years imprisonment. The Appellants were each awarded five (5) years! By the time that the appeal was heard the Appellants had already served nine (9) months.

5. Bearing in mind that the items stolen were all recovered and restored to the owner, and that they were all valued at only KShs 8,800/00, I considered that the 2<sup>nd</sup> Appellant had already been punished enough.

6. It was for all the above reasons that I allowed the 1<sup>st</sup> Appellant's appeal in its entirety on 12/07/2017, quashed the conviction and set aside the sentence imposed upon her. For reasons also appearing above, I dismissed the 2<sup>nd</sup> Appellant's appeal against the conviction; but I allowed his appeal against the sentence of five (5) years imprisonment. I set the same aside and substituted therefor a sentence of eight (8) months imprisonment from the date of his sentencing (21/11/2016).

**DATED AND SIGNED AT MURANG'A THIS 19<sup>TH</sup> DAY APRIL 2018**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 20<sup>TH</sup> DAY OF APRIL 2018**