

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 32 OF 2017

(FORMERLY NYERI HC CRIMINAL APPEAL NO 62 OF 2010)

(Appeal from original Conviction and Sentence in Kandara PM Criminal Case No 454 of 2008

ELKANA MOSES MBURU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant herein, **Elkana Moses Mburu**, was convicted after trial of **stealing stock** contrary to **section 275** of the **Penal Code** and sentenced to four 4 years imprisonment. He has appealed against both conviction and sentence.
2. This was the second case in which the Appellant was convicted and sentenced about the same time at Kandara. The first case was **Kandara PM Criminal Case No 455 of 2008**. There were two other cases - **Kandara PM Criminal Case No 213 of 2009** and **Kandara PM Criminal Case No 453 of 2008**. He was convicted and sentenced in these four cases in the order in which they appear above. In one of the cases the Appellant was convicted of and sentenced for the offence of **burglary and theft**. In the other three cases he was convicted of and sentenced for the offence of **stealing stock**. In the four cases he received sentences of imprisonment ranging from three (3) years to six (6) years. As there were no orders in the subsequent cases for sentences in them to run concurrently with the sentences in the previous case(s), it meant that under **section 37** of the Penal Code the sentences would run consecutively. That meant a very long time in jail for the Appellant!
3. At the hearing of this appeal, the Appellant abandoned his appeal against conviction and pursued only the appeal against sentence. More particularly, he pleaded that this court do direct that the sentence imposed upon him in the case giving rise to this appeal (**Kandara PM Criminal Case No 454 of 2008**) do run concurrently with the sentence in the previous case (**Kandara PM Criminal Case No 455 of 2008**).
4. Learned prosecution counsel for the Respondent had no objection to that course of action.
5. It was for the reasons appearing above that on 28/07/2017 I allowed the Appellant's appeal herein against sentence to the limited extent only that the sentence of imprisonment for four (4) years imposed upon him shall run concurrently with the sentence that he got in **Kandara PM Criminal Case No 455 of 2008** (seven(7) years imprisonment).

DATED AND SIGNED AT MURANG'A THIS 19TH DAY OF APRIL 2018

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 20TH DAY OF APRIL 2018