



**REPUBLIC OF KENYA**

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

**HCCRA NO. 227 OF 2017**

**BENSON MUSYOKA KIVILU ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGEMENT**

1. The Appellant was charged with offence of stealing by servant contrary to section 281 Penal Code.
2. Particulars being that on 15/09/2015 at Nairobi city within Nairobi County being servant to Gladys Nduku Malonza as a farm manager stole Kshs. 102,720/= which came into his possession by virtue of his employment.
3. The Appellant pleaded guilty and he was sentenced to serve 3 years imprisonment.
4. Being aggrieved by the above verdict, he lodged an appeal to have his sentence reduced.
5. He was a first offender and he claimed to have been conned of the money. He says now that he has reformed and fit to return to the society. He did standard 8 while in prison and scored 320 marks and wishes to pursue his education outside prisons.
6. The probation report on record stated that he was a good candidate for non-custodial sentence given his young age. It was recommended that an alternative sentence be meted out to him.
7. The prosecution via Mrs. Ndenda state counsel, opposed appeal on the ground that he admitted the charge and the remission denied was not a must.
8. The court has noted and taken the circumstances herein into account. The Appellant has served about 2½ years and has a balance of about 5½ months to go.
9. However the probation report and his uncontested performance report indicate that he is a good candidate for releasing at this stage.
10. The court ignored recommendation and mitigation on record thus the court makes the following orders:-

**1. The court reduces sentence to the period served.**

**2. The Appellant to be released forthwith unless otherwise legally held.**

**SIGNED DATED AND DELIVERED THIS 19<sup>TH</sup> DAY OF APRIL 2018 IN OPEN COURT.**

**C. KARIUKI**

**JUDGE**

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