REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 34 OF 2017

RESLAH WEKESA...APPELLANT

VERSUS

REPUBLIC..REPUBLIC

(From the original conviction and sentence in Criminal case No. 160C of 2017 of the Chief Magistrate's Court at Busia by Hon. J.N Maragia – Resident Magistrate)

JUDGMENT

1. The appellant, **RESLAH WEKESA**, was convicted after pleading guilty to four counts of stealing contrary to section 275 of the Penal Code.

2. The particulars of the offence in count one were that on 22nd March 2017 at **UPLANDS** estate, **MALABA** Township of **BUSIA** County, jointly with others not before court, stole one 6kg gas cylinder valued at Kshs.5700/= the property of **NELLY HILDA OWOGA.** In count two the facts were that that on 7th April 2017 at **SOKONI** area, **MALABA** Township of **BUSIA County,** jointly with others not before court, stole one 6kg gas cylinder valued at Kshs.7150/= the property of **DAMARIS MWENDE MUTUA.** In count three the facts were that that on 8th February 2017 at **UPLAND** area, **MALABA** Township of **BUSIA** County, jointly with others not before court, stole one 6kg gas cylinder valued at Kshs.5800/= the property of **GRACE NJERI KIBAKI,** While in count four the facts were that that on 5th March 2017 at **UPLAND** estate, **MALABA** Township of **BUSIA** County, jointly with others not before court, stole one 6kg gas cylinder valued at Kshs.5800/= the property of **FIDELIS JULLY ATYANG.**

3. She was sentenced to serve one year imprisonment. The sentences were ordered to run consecutively.

4. The appellant was in person. She appealed against the sentence only.

5. The state opposed the appeal through Mr. Omayo, learned counsel.

6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC [1972] EA 32.**

7. It is trite law of practice that an appellate court can only interfere with the sentence meted out by the trial court upon satisfaction of some circumstances. These circumstances were well illustrated in the case of **NILSSON VS REPUBLIC [1970] E.A. 599,601** as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James v Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor! To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershewsity (1912) C.CA 28 T.LR 364.

8. The sentence by the learned trial magistrate was very lenient.

9. The reason that made her ineligible for the sentence review according to the Report dated 2nd May 17, 2018 and filed in court was this appeal. Since the appeal was on sentence only, she can benefit for the other aspects of the report were favourable to her. I accordingly make an order that she serves the remainder of her sentence on **C.S.O** at Busakala Primary School. Her appeal succeeds to that extent only.

DELIVERED and **SIGNED** at **BUSIA** this **29th day** of May**, 2018**

KIARIE WAWERU KIARIE

JUDGE