

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 16 OF 2017

VINCENT OMALLA ODUOR.....APPELLANT

VERSUS

REPUBLIC.....REPUBLIC

(From the original conviction and sentence in Criminal case No. 657 of 2017 of the Chief Magistrate's Court at Busia by Hon.W.Chepseba– Chief Magistrate)

JUDGMENT

VINCENT OMALLA ODUOR the appellant herein was convicted for the offence of stealing by servant contrary to section 281 of the Penal code.

The particulars of the offence are that on the 28th March 2017 at **BUGENGI** market of **BUSIA** County being a servant of **MORRIS OLOO ODUOR**, stole cash Kshs.6500/= and other assorted items all valued at Kshs.24,750 the property of the said **MORRIS OLOO ODUOR**.

The appellant was in person. He contended that the sentence was harsh.

The facts of the prosecution case were briefly as follows:

On the 28th March 2017, the complainant was away in Nairobi. He had left the appellant to man his bar and hotel. When the manager went to check on him, he did not find him. He established that the items complained of were missing. The matter was reported to the police. The appellant was arrested. The items were recovered. He was charged for the offence.

The appellant pleaded guilty to the offence and was sentenced to serve 2 years imprisonment after his conviction.

The state through Mr. Owiti, learned counsel opposed the appeal.

Section 281 of the Penal Code provides as follows:

If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.

The learned trial magistrate was lenient and the sentence cannot be said to be harsh. I have no basis to reduce the sentence. The appeal is dismissed for want of merits.

DELIVERED and SIGNED at BUSIA this 29th day of November, 2017

KIARIE WAWERU KIARIE

JUDGE