

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL APPEAL NO. 102 OF 2015

RICHARD MUTIE MBINDYO.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction and sentence in **Kitui Chief Magistrate's Court Criminal Case No. 510 of 2015** by **Hon. A. S. Lesootia S R M** on 09/06/15)*

J U D G M E N T

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1. **Richard Mutie Mbindyo**, the Appellant was charged with the offence of **Stealing** contrary to **Section 268** as read with **Section 275** of the **Penal Code**. Particulars of the offence were that on **2nd day of June, 2015** at about **2.00 p.m.** at **Ivovoa Village** in **Katulani District** within **Kitui County** he stole one iron box valued at **Kshs. 500/=** the property of **Johneck Mutio Mbindyo**.

2. He pleaded guilty to the charge. He was convicted and sentenced to serve **eighteen (18) months imprisonment**.

3. Being dissatisfied with the sentence thereof he mitigates on the same on the grounds that: His mother passed on; The alleged stolen property was a family iron box which he had locked up inside his room in their homestead; The Complainant, his step-mother framed him up in this case because of hatred that she has towards him.

4. In response thereto, the State/Respondent through State Counsel Ms. Awour conceded to the appeal. She stated that nature of the offence and value of the item stolen should be taken into consideration.

5. I have re-considered what transpired at the trial court. The Appellant having admitted the charge could only appeal on the legality of sentence.

6. Facts presented reveal that the iron-box that purportedly belonged to the Appellant's step-mother and was found in the Accused person's house was valued at **Kshs. 500/=**.

7. In the case of **Kyalo vs. Republic (2009) KLR 325**, the Court of Appeal identified relevant factors for consideration in sentencing as those facts that mitigate for a lenient sentence like the Appellant being a first offender.

8. The Appellant herein was a first offender, and the value of the item stolen was negligible. In the premises I find it a case that calls for interference with the sentence. In the result the appeal is meritorious. I do reduce the sentence to the term already served (**nine (9) months imprisonment**).

9. The Appellant shall be released forthwith unless otherwise lawfully held.

It is so ordered.

Dated, Signed and Delivered at Kitui this 17th day of March, 2016.

L. N. MUTENDE

JUDGE