



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 64 OF 2014**

**ALEX CHITIAVI ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(Being an appeal from original conviction and sentence of M.L. NABIBYA – Ag. SRM. in Criminal Case No. 292 of 2014 delivered on 23rd May, 2014 at Butali.)*

**JUDGMENT**

1. Alex Chitiavi was charged before the Senior Resident Magistrate’s Court at Butali with the offence of stealing stock. He pleaded guilty, was convicted and sentenced to serve 3 years imprisonment.
2. In an appeal which Alex Chitiani (the Appellant herein) preferred before this Court, he prayed that the sentence be reduced as the same was harsh and excessive.
3. I have carefully perused the record before the trial Court and noted that prior to the sentencing, the Court called for a Pre-Sentence Report. That Report however recommended a custodial sentence terming the Appellant as an offender with an adverse record in criminal involvement. The Court in exercise of its discretion sentenced the Appellant aforesaid.
4. When the appeal came up for hearing, this Court called for a Sentence Review Report which was readily availed. The same was also not favourable to the Appellant. I have carefully perused the two Reports and noted their contents. In the absence of any contrary evidence, this Court also takes the view that the Appellant is not a suitable person for a non-custodial sentence.
5. The question which remains therefore is whether the sentence was excessive. The offence carries a maximum of 14 years. The Appellant was sentenced to 3 years imprisonment. Through the prosecution before the trial Court urged the Court to treat the Appellant as a first offender, evidence from the two reports suggest his deep involvement in criminal activity and recommended an institutionalised rehabilitation.
6. The 3 year sentence is slightly less than one-quarter of the maximum sentence provided in law. Going by the circumstances surrounding the commission of the offence, this Court is of a very considered view that the sentence remains reasonable if not lenient. The appeal therefore fails and is hereby dismissed.

**DELIVERED, DATED and SIGNED this 23rd day of July, 2015**

**A. C. MRIMA**

**JUDGE**