

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 62 OF 2013

JOHN OKUMU NANDIRI APPELLANT

V E R S U S

REPUBLIC RESPONDENT

(Appeal against conviction and sentence from the judgment of [L. M. NAFULA, SPM] in the Senior Principal Magistrate's Court at Mumias in Criminal Case No.206 of 2013)

J U D G M E N T

The appellant was charged with the offence of forgery contrary to **section 345** as read with **section 349** of the Penal Code. The particulars of the offence were that the appellant *on the 11.3.2013 at Mayoni Township, Matungu location in Matungu district within Kakamega County within intent to defraud forged a letter dated 11.3.2013 purporting it to be a genuine letter issued and signed by Bishop Beneah Salala Okumu to supply two kilograms of meat to John Okumu Nandiri (the appellant). The appellant pleaded guilty to the charge and was sentenced to serve 24 months imprisonment.*

The appellant's grounds of appeal are that the sentence is harsh, he is remorseful and urged the court to give an alternative sentence. He filed written submissions which expound on those grounds and he is asking the court to be lenient to him as he has a family. Miss Opiyo, State Counsel, opposed the appeal and submitted that the appellant was convicted on his own plea of guilty. The maximum sentence is three years and the appellant was sentenced to serve 2 years.

The appellant is seeking for leniency and he is not challenging his conviction. His mitigation before the trial court was that he was seeking for leniency and he will not repeat again. Taking into account the fact that the appellant only benefited with two kilograms of meat and that he was a first offender, I do find that the sentence is excessive. The appellant was convicted and sentenced on 25.3.2013. He has now served 11 months imprisonment. I do find that punishment to be sufficient. The 24 months imprisonment sentence is hereby set aside and replaced with the period already served. The appeal is allowed and the appellant shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 18th day of February 2014

SAID J. CHITEMBWE

J U D G E