



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPEAL NO. 260 OF 2013**

**DARREN MBITHI KALUNDA ..... APPELLANT**

**VERSUS**

**REPUBLIC**

*(Being an appeal from the conviction and sentence of Hon. R. Rator Resident Magistrate delivered on 24/9/2012 in Makueni Principal Magistrate Criminal Case No. 373 of 2012)*

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*(Before Hon. B. Thurairaja J)*

**J U D G M E N T**

1. The Appellant, **Darren Mbithi Kalunda** was charged with five counts as follows:-

Count I:- Stealing contrary to **section 275** of the **Penal Code**.

The particulars of the offence were that on the 31<sup>st</sup> day of August 2012 at **Full Gospel Church, Wote Location** in **Makueni District** of the **Makueni County** stole one DVD make **L.G.**, one remote control make **LG** all valued at Kshs. 4,500/= the property of **Ann Wamuyu Nyaga**.

2. Count II:- Stealing contrary to **section 275** of the **Penal Code**.

The particulars of the offence were that on the 31<sup>st</sup> day of August 2012 at **Full Gospel Church Wote, Unoa Sub-location, Wote Location** in **Makueni District** of the **Makueni County** stole one mobile phone make **Samsung** valued at Kshs.10,700/=, cash 5,700 the property of **Pauline Nduku Kitivo**.

3. Count III:- Stealing contrary to **section 275** of the **Penal Code**.

The particulars of the offence were that on the 31<sup>st</sup> day of August 2012 at **Full Gospel Church Wote, Unoa Sub-location** in **Makueni District** of the **Makueni County**, stole one mobile phone make **Nokia E 71** valued at Kshs.3,500/= the property of **Solomon Musyoki**.

4. Count IV:- Stealing contrary to **section 275** of the **Penal Code**.

The particulars of the offence were that on the 31<sup>st</sup> day of August 2012 at **Full Gospel Church Wote, Unoa Sub-location, Wote Location** in **Makueni District** of the **Makueni County**, stole one mobile

phone make **Inova** and cash Kshs.150/= all valued at Kshs.2,150 the property of **Alex Muinde Saina**.

5. Count V:- Stealing contrary to **section 275** of the **Penal Code**.

The particulars of the offence were that on the 31<sup>st</sup> day of August 2012 at **Full Gospel Church Wote, Unoa Sub-location, Wote Location** in **Makueni District** of the **Makueni County**, stole a mobile phone make **Itel** valued at Kshs.6,000/= the property of **Justus Wambua Mutune**.

6. The charges were read out to the Appellant and all the essential ingredients explained to him and he pleaded guilty in all the counts. The interpretation is reflected as **English, Kiswahili and Kikamba**. The facts were read out and the Appellant accepted the same as correct. The trial court followed all procedures of plea taking [See **Adan –vs- Republic 1973 EA 445**].
7. The record reflects that there was a court clerk in court. The Appellant participated in the trial and even mitigated. As held by the Court of Appeal in the case of **Said Hassan Nuno v Republic [2010] eKLR- Nyeri Criminal Appeal 322 of 2006:-**

**“We take judicial notice that one of the core duties of a court clerk is to offer interpretation services to accused or even to the court where it does not understand the language of the accused; or a witness to the case.”**

8. **Section 348** of the **Criminal Procedure Code** provides as follows:-

**“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”**

9. The Appellant was sentenced as follows:-

Count I:- Five (5) years imprisonment.

Count II:- Five (5) years imprisonment.

Count III:- Five (5) years imprisonment.

Count IV:- Five (5) years imprisonment.

Count V: Five (5) years imprisonment.

Sentence is being served concurrently.

10. Although the sentence in each count is within the law, the same is harsh and excessive. Consequently, I am persuaded to reduce the same to the period already served.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 28<sup>th</sup> day of May 2014.**

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**B. THURANIRA JADEN**

**JUDGE**