



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Criminal Appeal 90 of 2011**

***(From Original Conviction and Sentence in Criminal Case No. 280 of 2010 of the Senior Resident Magistrate's Court at Mariakani – D. M. Machage (SRM))***

**MKUZI TSAMA MKUZI ..... APPELLANT**

**- Versus -**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The Appellant was sentenced to a fine of Kshs. 20,000/- in default 12 years imprisonment for the offence of Stealing contrary to Section 275 of the Penal Code.

The particulars are that on the 1<sup>st</sup> day of December 2010 at Mwangutwa Primary School in Kaloleni – Kilifi County he stole one saw valued at Kshs. 11,000/- the property of M/s ST. SIMEON CHILD DEVELOPMENT CENTRE.

The appeal rests on the issue of the sentence being harsh and excessive. The offence of theft contrary to Section 275 of the Penal Code carries a maximum of three years.

Section 28(2) penal provides for a scale for default sentences.

The Appellant was fined Kshs. 20,000/- the corresponding imprisonment term should have been six months imprisonment. The sentence of 12 years appears to have been an oversight. As it stands its clearly illegal.

A perusal of the lower Court record shows that he was convicted in the year 2010. He has been in prison custody for more than 1<sup>1/2</sup> years. I deem that to be sufficient punishment. The sentence of imprisonment is revised to such term as he has already served. He is set at liberty unless otherwise lawfully held.

**Judgement read and delivered in open Court this 16<sup>th</sup> day of May, 2013.**

**M. MUYA  
JUDGE**

**In the presence of:-**

**Mr. Mungai for the State**

**Appellant - present**

**Court clerk – Mr. Musundi**