



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 42 OF 2013**

*(Appeal against conviction and sentence from the Original Criminal Case No. 206 of 2013 in the Senior Principal Magistrate's Court Mumias)*

**JOHN OKUMU NANDIRI ..... APPELLANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**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 appellant pleaded guilty and was sentenced to serve 24 months imprisonment. The grounds of appeal are that the sentence is excessive and the accused seeks the court's leniency. The appellant also submitted that he is sickly. The appellant contends that he committed the offence as he had a burial ceremony and wanted the meat to assist him. Mr. Oroni, State Counsel, left the matter to the court.

The facts of the case were that on the 11.3.2013 the appellant wrote a letter purporting it to have been written by Bishop Beneah Salala Okumu of ACK Church Mumias and presented it to a butchery whereby he was given 2 kilograms of meat. When the owner of the butcher went to collect his money from the Bishop he was told that he had not written the letter. The appellant pleaded guilty and in mitigation asked the court to be lenient to him. The appellant has now served 9 months imprisonment. The appeal itself lacks merit on the issue of conviction. However, on sentence I do find that the same is harsh in the circumstances. The sentence is set aside and replaced with the period already served. The accused shall be set at liberty unless otherwise lawfully held.

***Delivered, dated and signed at Kakamega this 18<sup>th</sup> day of December 2013***

**SAID J. CHITEMBWE**

**J U D G E**