

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Criminal Appeal 119 of 2011

EZEKIEL GATITU KURIA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(An Appeal from original conviction and sentence in Molo C.M.CR.C. No.825 of 2011 by Hon. S.M.S. Soita, SRM dated 3rd May, 2011)

JUDGMENT

EZEKIEL GATITU KURIA (the appellant) was convicted on a charge of stealing from a dwelling house contrary to **Section 279(b) Penal Code**. The particulars of the charge stated that on 27th April 2011 at MAU SUMMIT in MOLO DISTRICT within the Rift Valley Province, he stole 24kgs of dry maize valued at Kshs.500/= the property of **JOHN KURIA KARIUKI** from his dwelling house.

Appellant pleaded guilty to the charge.

The facts narrated were that on the material date, the complainant (who is the appellant's father) went on a safari, after securing his door. At about 2.00 p.m. the complainant received a call from one of his daughters who informed him that appellant had stolen 24kgs of maize valued at Kshs.500/=. The complainant alerted the OCS and appellant was arrested while looking for customers. The maize was recovered.

Appellant confirmed that the facts were correct, so he was convicted on his own plea and sentenced to serve 5 (FIVE) years imprisonment. The prosecution had informed the trial court that appellant was not a first offender as the previous year he had been convicted on a charge of stealing and placed on Community Service Order. His appeal is basically on sentence which he terms as harsh. He informed this court that he is very remorseful and has apologised to his parents, who were the ones he offended. He expressed a willingness to go back home and pursue college education as his parents are now ready to receive him.

Mr.Omari on behalf of the State urged the court to consider that the appellant was not a first offender, although he conceded that the 5 year sentence was rather harsh.

I inquired and established from the appellant, who appears to be a very young man, that he is 26 years old and the eldest in a family of seven. I take into consideration the nature of the stolen item and its value, i.e., 500/=. I also consider that the complainant is his parent and the appellant did not benefit from his misdeed as the maize was recovered before he could dispose of it and enjoy the proceeds. I take into account the period he has served in prison, i.e., a year and my view is that indeed the 5 year sentence meted out was rather harsh. The one year he has served in prison, in my opinion is sufficient

punishment. I therefore set aside the sentence and substitute it with the period already served. This means that appeal succeeds and the appellant shall be set at liberty forthwith unless otherwise lawfully held.

Delivered and dated this 18th day of May, 2012 at Nakuru.

**H.A. OMONDI
JUDGE**