



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**CRIMINAL APPEAL 12 OF 2011**

*(From Original Conviction and Sentence in Criminal Case No. 204 of 2010 of the Senior Resident Magistrate's Court at Kaloleni: S.R. Wewa – S.R.M.)*

**JUMA MWADENA ..... APPELLANT**

**=VERSUS=**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

The Appellant herein **JUMA MWADENA** has filed this appeal against his conviction and sentence by the learned Senior Resident Magistrate sitting at Mombasa Law Courts. The Appellant was first arraigned in court on 18<sup>th</sup> October 2010 on a charge of **ESCAPE FROM LAWFUL CUSTODY CONTRARY TO SECTION 123 OF THE PENAL CODE**. The particulars of the charge were that:

***“On the 7<sup>th</sup> day of October 2010 at Kaloleni Location in Kaloleni district within Coast Province, being in lawful custody at Kaloleni GK PRISON while serving a three year jail term escaped from such lawful custody”***

When the charge was read out to the Appellant he entered a plea of **‘Guilty’**. Thereafter the facts were read out by the Court Prosecutor **INSPECTOR MASINDE** as required by law. The Appellant maintained his plea of guilty saying:

***“The facts are correct”***

The trial magistrate then proceeded to convict the Appellant on his own plea of guilty. I am satisfied that this plea of guilty was properly taken and recorded in line with Section 207(2) of the Criminal Procedure Code. I therefore confirm the conviction of the Appellant.

The Appellant has also appealed against his three (3) year sentence terming it harsh and excessive. This appeal against sentence was conceded to by **MR. JAMI** for the State. The offence charged is a misdemeanor. In line with Section 36 of the Penal Code the sentence ought not to have been in excess of two (2) years imprisonment. I therefore allow the appeal against sentence. I set aside the three (3) year term imposed by the trial court and substitute instead a term of 18 months imprisonment to run from the date of conviction in the lower court. It is so ordered.

**Dated and Delivered in Mombasa this 27<sup>th</sup> day of June 2012.**

**M. ODERO**  
**JUDGE**

In the presence of:

Appellant in person

Mr. Tanui for State