

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 444 of 2009

CYRUS NJORA

MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with the offence of stealing contrary to Section 275 of the Penal Code. On conviction he was sentenced to five years imprisonment. This is an appeal against both the conviction and sentence. He has complained that he was not given a fair trial in that his trial was delayed which contravened his rights. I have perused the entire record before me. The appellant was given an opportunity to cross examine the witnesses and all tenets of criminal procedure were complied with. There is no way he can justify the allegation that he was not accorded a fair trial. His defence was considered and disbelieved by the learned trial magistrate. On the evidence as a whole there was every justification for the conviction.

The offence commands a sentence of three years. The appellant was jailed for five years with hard labour which was in excess of the statutory provision. The learned counsel for the Republic concedes the appeal on the grounds of sentence only. With respect I agree and reduce the sentence imposed by the learned trial magistrate to three years imprisonment as provided by law. The appellant was sentenced on 6th January, 2009. By now, had the sentence been legal ,that is, three years imprisonment, he would have completed his sentence. Accordingly, I allow the appeal and order that the appellant shall be released forthwith unless otherwise lawfully held. I note from a statement from the bar by the learned counsel for the Republic which was confirmed by the appellant himself, he is awaiting judgment which is yet to be delivered in respect of another appeal.

Orders accordingly.

Dated, signed and delivered at Nairobi this 27th day of September, 2012.

**A. MBOGHOLI MSAGHA
JUDGE**