



**DAVID MUNGAI KARIUKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(From original conviction and sentence in Criminal Case No. 1195 of 2011 of the Senior Principal Magistrate's Court at Narok, W. N. Njage {C. M.})***

**JUDGMENT**

The appellant was charged on two counts of stealing contrary to Section 275 of the Penal Code, (*Cap. 63, Laws of Kenya*) and assault causing actual bodily harm contrary to Section 251 of the Penal Code aforesaid. The Appellant pleaded guilty and was convicted on his own plea of guilty and was sentenced to 12 months imprisonment on each count, and the sentences were ordered to run concurrently.

Unhappy with his sentence, he has come to this court on appeal. At the hearing of his appeal he pleaded that his sentence be reduced.

The law relating to appeals where an appellant has been convicted on his own plea of guilty is set out in Section 348 of the Criminal Procedure Code, (*Cap. 75, Laws of Kenya*). That Section provides that no appeal shall be allowed when a person has been convicted on his own plea of guilty, except to the extent and legality of the sentence.

The punishment for the offence of stealing contrary to Section 275 of the Penal Code is imprisonment for three years. The appellant was convicted of stealing a sofa set cushion, one sub-woofer all valued at shs 4,800/=. He was in the circumstances sentenced to twelve months imprisonment.

Similarly, the offence of causing grievous bodily harm contrary to Section 251 of the Penal Code is imprisonment for five years. The appellant was sentenced to twelve (12) months imprisonment.

In light of the goods stolen, and the fact the goods were recovered the imprisonment of twelve months was reasonable, and I have no cause to reduce the same.

On whether the sentences should run consecutively, Section 14(1) empowers the trial court when a person is convicted at one trial of two or more distinct offences to sentence him to the several punishments prescribed thereof .. and those punishments when consisting of imprisonment shall commence the, one after the expiration of the other in the order the court may direct, unless the court directs the punishments shall run concurrently. The only prohibition is that the sentences shall not exceed the maximum of fourteen (14) years (*Section 14(3) of the Criminal Procedure Code*).

In this case the learned trial magistrate sentenced the appellant to twelve months imprisonment and which sentences were to run consecutively. The maximum sentence for the offence of stealing contrary to Section 275 of the Penal Code is three years, whereas the maximum sentence for assault causing actual bodily harm is five years. The total sentence upon the appellant was twenty-four months, or 2 years, well below the prescribed maximum of fourteen years under Section 14(3) aforesaid.

I am therefore satisfied in terms of both Section 14(1) and 14(3) of the Criminal Procedure Code that the trial court acted within its jurisdiction and that the sentence and extent thereof were legal in terms of Section 348 of the Criminal Procedure Code. They were also appropriate in the circumstances of the offences. I see no reason to interfere with them. I confirm the same, and dismiss the appellants' appeal as having no merit at all.

It is so ordered.

**Dated, signed and delivered at Nakuru this 12<sup>th</sup> day of October, 2012**

**M. J. ANYARA EMUKULE**

**JUDGE**