

present charge against the appellant.

In his defence, the appellant said that he was a clothes vendor and that he was not the person who stole the mobile phone neither was he at the scene of the offence.

Having considered the foregoing evidence in relation to the submissions by the appellant and the concession of the appeal by the respondent, this court's opinion is that although the stolen mobile phone was not recovered, there was sufficient and credible evidence from the complainant. (PW1) showing that he indeed lost his mobile phone at the hands of the appellant whom he had previously known. Indeed, the appellant may have been allowed by the complainant to go with the phone on condition that he returns it on the same day. However, the appellant went away with the phone never to be seen again until such time that he was traced and arrested. Clearly, the failure of the appellant to return the phone to its rightful owner as promised was a manifestation of the intention to permanently deprive the complainant of the phone. Indeed, the complainant was permanently deprived of his phone since it was never recovered from the appellant at the time of his arrest.

The defence raised by the appellant was disapproved and discredited by the complainant's evidence which showed that the appellant was at the scene of the offence when it occurred and was in fact, the culprit. The appellants conviction by the learned trial magistrate is therefore sustainable.

With regard to the sentence, section 279 (a) of the penal code provides for a fourteen years imprisonment. The appellant was handed over a term of imprisonment for five years. The sentence was therefore lawful and proper for a person credited with seven (7) previous convictions, six of which were relevant.

Although the respondent conceded the appeal, it is the view of this court that the appeal lacks merit. It is therefore dismissed in its entirety.

[Delivered and signed this 13th day of November, 2012.]

J.R. KARANJA.

JUDGE.