



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NOs. 236 & 237 OF 2010

*(From Original Conviction and Sentence in Criminal Case No.183 of 2010 of the
Principal Magistrate's Court at Voi: Nyakundi L.M. – R.M.)*

PHILIP LUMUMBA LABAN 1ST APPELLANT

JOHN NDOME 2ND APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The two Appellants **PHILLIP LUMUMBA LABAN** (hereinafter referred to as the 1st Appellant) and **JOHN NDOME** (hereinafter referred to as the 2nd Appellant) have both filed this appeal against their conviction and sentence by the learned Resident Magistrate sitting at Voi Law Courts. Both Appellants were arraigned before the trial court on 2nd March 2010 charged with **STEALING BY SERVANT CONTRARY TO SECTION 281 OF THE PENAL CODE**. They both pleaded guilty by admitting the charge. The facts were thereafter read out by the prosecutor as is required by law. Each Appellant responded:-

“facts are correct”

thereby maintaining their plea of guilty. Indeed in his mitigation the 1st Appellant confirmed his plea of guilty by saying:

“I pray for leniency. We sold the maize because we had not been paid”

The plea was properly and procedurally taken and the conviction rendered in accordance with S. 207(2) of the Criminal Procedure Code was sound. The proceedings were conducted in Kiswahili which both Appellants by their own admission understood. The fact that they both actively participated in the proceedings is proof that they did comprehend the proceedings. I am satisfied that the conviction of both was proper and lawful and I do uphold the same.

The trial magistrate did allow both Appellants an opportunity to mitigate after which he sentenced

each to serve seven (7) years imprisonment. This sentence was in my view harsh and excessive given the circumstances of the case. The court awarded the maximum penalty yet both accuseds were certified to be first offenders. The value of the stolen maize was minimal Kshs.3,300/-. The court ought to have considered the fact that the two Appellants pleaded guilty at the outset thus saving the court from an unnecessary trial. The 2 Appellants have been in prison since March 2010 a period of about 12 months. This in my view is sufficient punishment for the crime and I have no doubt that they have now seen the error of their ways. I therefore allow the appeal against sentence. The 7 year sentence is hereby set aside and substituted with time already served. Both Appellants to be set free forthwith unless otherwise lawfully held.

Dated and Delivered at Mombasa this 10th day of March 2011.

M. ODERO
JUDGE

In the presence of:
Both Appellants in person
Mr. Muteti for State