

surprised that the appellant abandoned his appeal against conviction. The learned Senior Deputy Prosecution Counsel **Mr. Oluoch**, opposes the appeal contending that the appeal is incompetent.

It turned out that at the time of commission of the offence, the appellant was aged about 17 years only. He was therefore a minor and the sentence of two years imprisonment was obviously improper. The record further shows that the appellant was a first offender and sought forgiveness. The learned Senior Resident Magistrate did not appear to regard those facts before passing sentence.

In the premises, I am entitled to interfere. The appellant was in prison for a period of nine (9) months before being admitted to bail pending this appeal. In my view, the appellant has learnt his lesson. I allow his appeal against sentence. The sentence of two (2) years imprisonment is hereby set aside and is substituted therefore with the period already served.

The appellant should therefore be set at liberty forthwith unless otherwise lawfully held.

Order accordingly.

**DATED AND DELIVERED AT ELDORET THIS
17TH DAY OF NOVEMBER, 2011.**

**F. AZANGALALA
JUDGE**

Read in the presence of:-

1. The **Nelson Kiprotich Munyur**, appellant in person and
2. **Mr. Kabaka** for the Republic.

**F. AZANGALALA
JUDGE
17/11/2011**