



not appreciated by the learned Senior Resident Magistrate resulting in him imposing an excessive sentence.

**Mr. Chirchir**, the learned Senior State Counsel who represented the respondent State opposed the appeal. In his view, the appellant deserved the sentence.

The record shows that the appellant was a first offender and pleaded guilty to the charge. The record further shows that the stolen animal was recovered. The complainant therefore lost nothing save for the anxiety she suffered for the period she looked for her cow which period was not prolonged because the cow was recovered the next day after the theft. The appellant is remorseful and says he deeply regrets committing the offence. In those premises, I have come to the conclusion that the learned Senior resident magistrate may not have fully appreciated the appellant's circumstances. I will therefore interfere with the sentence imposed upon the appellant. His appeal against sentence is accordingly allowed. The sentence of five (5) years imprisonment is hereby set aside. The appellant has served slightly over 1½ years imprisonment. In my view, he has learnt his lesson. I substitute the sentence of five years imprisonment with a sentence of imprisonment for the period already served. The appellant should therefore be released forthwith unless he is otherwise lawfully held.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS  
7<sup>TH</sup> DAY OF DECEMBER, 2011.**

**F. AZANGALALA  
JUDGE**

**Read in the presence of:-**

**Abdalla Maritim**, the appellant and **Mr. Kabaka** for the State.

**F. AZANGALALA  
JUDGE  
7/12/2011.**