



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**Criminal Appeal 114 of 2008**

M.N.....APPELLANT

**VERSUS**

REPUBLIC .....RESPONDENT

**[Being an appeal from the original conviction and sentence in Kangundo PM's Court**

**Criminal Case No. 142/2007 by G.L. Nzioka Ag., SPM on 6.6.2008**

**JUDGMENT**

1. At the hearing of this Appeal, Mr. Mutinda for the Appellant abandoned the Appeal on conviction and pleaded that on sentence, the option of a fine be given. Learned Principal State Counsel agrees and to put matters into perspective, the Appellant was charged in Kangundo PM's Court Criminal Case No. 142/2007 with the offence of forgery contrary to section 349 of the Penal Code and stealing by servant contrary to section 281 of the Penal Code. He was alleged to have forged a cash deposit slip and stolen Kshs. 20,000/= from Joseph Munyasya Matolo which came into his possession by fact of his employment.
2. I have taken into account the evidence on record as well as the Appellant's mitigation. He was sentenced to serve one (1) year's imprisonment on each of the two counts and the sentences were to run concurrently. He is HIV Positive and regrets his conduct. It would also seem that the monies stolen were recovered.
3. This is a fit case for discretion on sentence to be exercised and so I shall allow the Appeal on sentence, and order that he shall pay a fine of Kshs. 10,000/= in each count i.e 20,000/= in total in default one (1) year's imprisonment in each count and the prison sentences to run concurrently.
4. Orders accordingly.

Dated and delivered at **Machakos** this 5<sup>th</sup> day of **February 2010**.

**Isaac Lenaola**

**Judge**

In the presence of; Mr. Mutinda for Appellant

Mr. Omirera for Respondent

**Isaac Lenaola**

**Judge**