

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 109 of 2008

AUSTINE NJAGI NYAGA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with four (4) counts of stealing contrary to **section 275** of the **Penal Code**. The four (4) counts relate to theft of bicycles on various dates in the month of August, 2007 from different people. After a full trial, he was sentenced to eighteen months on each count, which were to run concurrently from 22nd April, 2008.

Being aggrieved by both the conviction and sentence, the appellant has preferred this appeal on the grounds which are purely mitigating factors.

At the hearing of this appeal, the appellant changed his mind and chose to challenge only the sentence. Learned counsel for the respondent asked the court to use its discretion in the matter.

Stealing under **section 275** is a felony and the punishment is three (3) years imprisonment. Sentencing is an exercise of discretion and an appellate court will not interfere with a sentence imposed by the trial court unless it is manifestly severe or excessive or unlawful.

In the circumstances of this case, where the appellant set out to steal several bicycles as if that was the area of his specialization and considering that he has nearly served the sentence, his appeal cannot succeed. But more significantly the sentence was in fact lenient and not unlawful.

The appeal is dismissed.

Dated, Signed and Delivered at Nakuru this 5th day of March, 2010.

W. OUKO
JUDGE.