



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 110 of 2008**

ALFRED KIBOI CHEMEI ::::::::::::::: APPELLANT

~VRS~

REPUBLIC ::::::::::::::: RESPONDENT

(Appeal arising from SRS RM CR. NO.273 of 2008)

JUDGMENT

The Appellant Alfred Kiboi Chemei was convicted on his own plea of guilty by Sirisia Resident Magistrate of the offence of stealing contrary to section 275 of the Penal Code and sentenced to four (4) years in jail. He now appeals against conviction and sentence.

The appeal on conviction was opposed by the state on grounds that section 348 of the Criminal Procedure Code bars the Appellant from appealing since he pleaded guilty to the offence. The state conceded to the appeal against sentence in that it was too harsh and excessive going beyond the maximum allowed by the law.

I entirely agree with the state that the Appellant is barred from appealing against conviction by section 348 of the Criminal Procedure Code. The grounds he has raised condemn the trial magistrate for failing to appreciate that there was no enough proof of theft and that no exhibits were produced. Such grounds cannot be entertained in an appeal of this nature bearing in mind the provisions of sections 348. The Court of Appeal has ruled that section 348 is not an absolute bar to appeal. The kind of issues which may be entertained concern the manner in which the plea was taken or whether any constitutional rights were violated. This is not the issue here and for this reason, I uphold the conviction.

The maximum sentence under section 275 of the Penal Code is three years. The sentence of four (4) years in jail was illegal and is hereby set aside. The prosecutor said the Appellant was a first offender. The property stolen was 100kg of coffee valued at Ksh.5,000/=. The Appellant ought to have been given a lenient sentence. I impose a sentence of one and half years which has now been fully served bearing in mind that he was convicted on 5/11/2008. The Appellant is therefore set at liberty unless otherwise lawfully held.

**F. N. MUCHEMI
JUDGE**

Judgment delivered and dated this 16th day of June, 2010 in the presence of the Appellant and the State Counsel Mrs. Leting.

**F. N. MUCHEMI
JUDGE**