



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI**

Criminal Appeal 27 of 2009

(From original conviction and in Criminal Case No. 1006 of 2008 sentence of the Senior Resident Magistrate's Court at Kilifi before Hon. J. M. Nduna – SRM)

SAMSON MWANGI GATUNEAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

Samson Mwangi Gatune (the appellant) was convicted on a charge of stealing by servant contrary to section 281 of the Penal Code. He pleaded guilty to the charge and was sentenced to serve four (4) years imprisonment.

The charge was read over to the applicant in English and interpreted to Kiswahili and he stated:
“it is true”.

The particulars of the charge were that on 8th December 2008 at Msumarini area in Kilifi District within Coast Province, being a servant to Nancy Njoki Njoroge, he stole from her one amplifier, two shoulder shawl, two window curtains, one bedsheet, one charger, one adapter and one big red box all valued at Kshs. 16500/-, when the facts were narrated to the court – appellant confirmed them to be correct. Incidentally he was caught red handed with the items.

From a perusal of the record, I confirm that the plea was unequivocal.

In mitigation, appellant informed the trial court that he was 21 years old and sought forgiveness. His appeal is that he was cajoled by police to plead guilty in reward of an acquittal. The appeal is opposed – Miss Waigera for the State submits that the offence attracts a jail term of seven (7) years and the four year sentence was proper and appellant should serve it to completion.

I have already observed that plea was unequivocal, there is nothing on record to suggest that appellant was forced to admit the charge. The charge was interpreted to appellant in Kiswahili, which was also his language of choice at the hearing of the appeal. The conviction was safe and is upheld. His written submissions are totally unrelated to the grounds of appeal.

I take into account the value of the goods, the fact that they were all recovered – meaning that appellant did not reap any benefits from his act. I also take into account the period he has spent in prison and I am persuaded that it has satisfied the misdeeds and that a four year period, in the circumstances is rather harsh. Under the circumstances then I set aside the four year imprisonment term and reduce it to the period already served.

Consequently appellant shall be set at liberty forthwith unless otherwise lawfully held.

Delivered and dated this 6th day of July 2010 at Malindi

H. A. Omondi
LADY JUSTICE