

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 117 of 2009

(From Original Conviction and Sentence in Criminal Case No. 160 of 2009 of the Senior Resident Magistrate's Court at Kaloleni: Andayi W.F. – S.R.M.)

ROBERT MWANGOME MALANGA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

ROBERT MWANGOME MALANGA the Appellant herein has filed this appeal challenging his conviction and sentence by the learned Senior Resident Magistrate sitting at Kaloleni Law Courts. The Appellant and his co-accused one **AMADI SAIDI HAJI**, were both arraigned in the lower court on 3rd July 2009 and charged with two (2) counts of **STEALING STOCK CONTRARY TO SECTION 278 OF THE PENAL CODE**. The Appellant entered a plea of guilty to both counts. The facts were read out and the Appellant having been duly warned by the trial magistrate maintained his guilty plea. He was thereafter convicted in accordance with S. 278 of the Criminal Procedure Code. After listening to his mitigation the learned trial magistrate sentenced the Appellant to serve three (3) years imprisonment on each count. The court further ordered that the two sentences be served consecutively. Being dissatisfied with this decision the Appellant filed this present appeal.

MR. KINYANJUI, learned counsel who represented the Appellant at the hearing of the appeal indicated to the court that their appeal was not against the Appellant's conviction but was only against the sentence imposed which he argued was harsh and excessive given the circumstances. **MR. ONSERIO** learned State Counsel who appeared for the Respondent State opposed this

appeal against sentence. He submitted that the sentence was both lawful and appropriate.

I have carefully perused the record of the proceedings from the lower court. I am satisfied that the learned trial magistrate did follow laid down procedure in recording the plea and in convicting the Appellant. I find no reason to interfere with that conviction. I have also considered the three (3) year sentence imposed by the court on each count. S. 278 of the Penal Code provides for a maximum sentence of fourteen (14) years. The three (3) year term imposed by the court was well below the legal maximum for this offence. However the record indicates that the Appellant was a first offender. This coupled with his plea of guilty which saved the court from having to conduct an unnecessary trial, were facts which as submitted by learned counsel called for the imposition of a lenient sentence. It is also pertinent that the two offences occurred roughly during the same period of time. In the circumstances I feel that the consecutive terms given by the trial court which amounted effectively to a prison term of six (6) years was quite excessive. I do uphold and confirm the three (3) sentences for each count but instead I do set aside the lower court's order that the sentences be served consequently and instead I substitute an order that the three (3) year sentences on each count will be served **concurrently**, to run from the date of 1st conviction in the lower court.

Dated and Delivered in Mombasa this 29th day of September 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-

Kinyanjui for Appellant

M. ODERO

JUDGE

29/09/2010