



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

**Criminal Appeal Case 386 of 2007**

**ALEXANDER ONDIEKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Appeal against Conviction and Sentence in Senior Principal Magistrate's Court at Nanyuki in Criminal Case No. 2301 of 2007 dated 27<sup>th</sup> November 2007 by H. N. Ndungu (Miss), Ag. Senior Principal Magistrate)***

**JUDGMENT**

This appeal is against sentence only. The Appellant ALEXANDER ONDIEKI was charged in the Senior Principal Magistrate's Court, at Nanyuki with one count of stealing by servant contrary to *Section 281* of the Penal Code. The particulars of the charge were that on the night of 29<sup>th</sup> and 30<sup>th</sup> March, 2007 at Greenland Farm, Timau of Meru District within Eastern Province, being a servant of Greenland Agro-Producers Limited stole from the said farm four irrigation drips, pipes and forty-eight rolls of strings all valued at Ksh.120,000/=, the property of the said Greenland Agro-Producers Limited.

Upon arraignment in Court on 27<sup>th</sup> November, 2007 and the charge having been read to him, the Appellant readily pleaded guilty to the same and was accordingly convicted on his own plea of guilty. Upon conviction he was sentenced to 30 months imprisonment. The Appellant was aggrieved by the conviction and sentence and hence lodged the instant Appeal through MESSRS G. O. OMBACHI & COMPANY ADVOCATES.

When the appeal came up for hearing, Mr. Chweya, learned Counsel for the Appellant, elected to abandon the appeal on conviction but instead concentrate his energies on appeal on sentence. In support of the appeal on sentence, Counsel submitted that the sentence imposed was harsh and excessive. That the Appellant pleaded guilty and saved Court valuable judicial time. As a result of the conviction, the Appellant had lost his employment. Finally Counsel submitted that the Appellant had so far served 12 months of the term imposed.

MR. ORINDA, Learned Senior Principal State Counsel, did not oppose or support the appeal on sentence. Instead he elected to leave the matter to Court. The offence the Appellant was convicted of attracts seven (7) years imprisonment. The thirty (30) months imprisonment imposed on the Appellant could not therefore be said to be harsh and excessive.

Sentencing is generally a matter for the discretion of the trial Court. The discretion must, however, be exercised judicially and not capriciously. The trial Court must be guided by evidence and sound legal principles. It must take into account all relevant factors and eschew all extraneous or irrelevant factors. Certainly the Appellate Court would be entitled to interfere with the sentence imposed by the trial Court if it is demonstrated that the sentence imposed is illegal or is so harsh and excessive as to amount to a miscarriage of justice, and or that the Court acted upon wrong principle, took into account irrelevant and extraneous factors and finally if the Court exercised its discretion capriciously. See generally, OGALO S/O OWUORA VS REPUBLIC (1954) 19 EACA 270 JAMES VS REPUBLIC (1950) 10 EACA 147, NILSON VS REPUBLIC (1970) EA 599 and WANJEMA VS REPUBLIC (1971) EA 493.

The trial Court's notes on sentence in this matter are extensive and detailed and that is how it should be.

The trial Court is obliged to make such detailed notes on the matters it took into account in arriving at the sentence imposed. Of course such detailed notes are not essential in cases where only one sentence is provided for by the Penal provisions. In the instant case, the trial Court gave reasons why it felt that custodial sentence was desirable. I do not discern anything capricious that the trial Court may have taken into account in arriving at the sentence. If anything the trial Court exercised its discretion in sentencing judiciously. The trial Court did not also take into account extraneous matters or failed to take into account relevant matters. The trial Court was certainly alive to the principles of sentencing. Yes the offence attracts a maximum jail term of seven (7) years upon conviction. The Appellant was sentenced to 30 months. Although ordinarily this may pass off as harsh sentence, however, considering the manner in which the offence was committed, the sentence was nonetheless well-deserved. The Appellant was not at all remorseful. The trial Court too considered the Appellant's mitigation. However, the sentence imposed was within the law.

Taking all the foregoing into consideration, I find that the Appeal on sentence lacks merit and it is accordingly dismissed. The sentence of 30 months imprisonment imposed on the Appellant is hereby confirmed.

Those shall be the orders of the Court in this appeal.

*Dated and delivered at Nyeri this 29<sup>th</sup> day of January 2009.*

**M. S. A. MAKHANDIA**

**JUDGE**