

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

Criminal Appeal 183 of 2007

MICHAEL KYULEAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Arising from the original sentence and conviction in CM's Criminal Case No. 3206 of 2007 at the Resident Magistrate's Court at Mombasa)

J U D G M E N T

I have considered the grounds set out in the petition of appeal. I have also taken into account the oral arguments tendered by the appellant and the concession made by the learned State Counsel. The learned trial magistrate noted the appellant's mitigation but did not take that into account when sentencing.

For this reason I am convinced the sentence should be interfered with on appeal. Consequently, I allow the appeal as against sentence by setting aside the sentence of 18 months and substituting the same with a sentence of 8 months. The sentence to run from the date of sentence.

Dated and delivered at Mombasa this 10th day of March 2008.

J.K. SERGON

J U D G E