



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appeal 603 of 2005**

**(From original conviction (s) and Sentence(s) in Criminal Case No. 5750 of 2005 of the Chief Magistrate's Court at Makadara (J. Gandani - SRM)**

**DIANA ISALIKU MEMBA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**

**605 OF 2005**

**(From original conviction (s) and Sentence(s) in Criminal Case No. 5750 of 2005 of the Chief Magistrate's Court at Makadara (J. Gandani - SRM)**

**JANE EMUNGU EMUMBUSA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

**DIANA ISALIKU MEMBA** and **JANE EMUNGU EMUMBUSA** were convicted on their own plea of guilty to a charge of **STEALING** contrary to **Section 275** of the **Penal Code**. They were each sentenced to 3 years imprisonment. They now challenge the sentence imposed by the learned trial magistrate against them.

The 1<sup>st</sup> Appellant in her submission challenges the sentence for being harsh on the basis that her children had since scattered following her imprisonment. That the money she stole was recovered from her. The 2<sup>nd</sup> Appellant urged the court to forgive her. The 2<sup>nd</sup> Appellant also said that the Kshs.83,000/- recovered in the case was recovered from both of them.

**Mr. Makura** learned Counsel for the State opposed the appeal on sentence. Counsel submitted that the sentence of 3 years imprisonment was within the law and that before passing that sentence, the trial court considered the Appellants' mitigation. He urged the court to dismiss the appeal since a substantial

sum of money was lost.

I have considered this appeal. The maximum sentence for the offence of stealing contrary to **Section 275 of the Penal Code** is 3 years imprisonment. I have considered that the Appellants were first offenders and that they pleaded guilty to the charge. Having saved court's time and having proved their remorsefulness by pleading guilty to the charges, the learned trial magistrate was harsh to impose the maximum penalty to the charge in all the circumstances of the case.

I will allow the appeal against sentence by setting aside the sentence of 3 years imprisonment and in substitution thereof, I order a sentence of 18 months imprisonment against each Appellant from the date of the original sentence in the lower court.

Dated at Nairobi this 7<sup>th</sup> day of February 2007.

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**LESIT, J.**

**JUDGE**

Read, signed and delivered in the presence of;

Both Appellants - present

Mr. Makura for the State

Tabitha: CC

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**LESIT, J.**

**JUDGE**