



REPUBLIC OF KENYA

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

Criminal Appeal 603 & 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)

DIANA ISALIKU MEMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 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 1st 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 2nd Appellant urged the court to forgive her. The 2nd 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 7th day of February 2007.

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LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Both Appellants - present

Mr. Makura for the State

Tabitha: CC

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LESIIT, J.

JUDGE