

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 274 of 2005

(From original conviction (s) and Sentence(s) in Criminal Case No. 2271 of 2005 of the Chief Magistrate's Court at Kibera (Mrs. Kasera - SRM))

LUCY WAITHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

LUCY WAITHIRA pleaded guilty to one charge of **STEALING BY SERVANT** contrary to **Section 281** of the **Penal Code** and was sentenced to 4 years imprisonment. She is challenging the sentence.

In her brief submission the Appellant stated that she was 18 years old when the learned trial magistrate sentenced her almost 2 years ago. She stated that she was remorseful for the offence and also had personal problems which she did not elaborate. The State, through the State Counsel, **Mrs. Kagiri** opposed the appeal against sentence stating that the offence attracts a maximum sentence of 7 years and that 4 years imprisonment was legal.

The issue before court was not the legality or otherwise of the sentence. The issue is whether the sentence was appropriate. The Appellant was a young person, was a first offender, had pleaded guilty to the charge and therefore saved the court's time and was remorseful. Part of the things stolen were recovered. The learned trial magistrate did not direct herself to the fact that the Appellant was of a young age and the fact that she was a first offender and in those circumstances, a non-custodial sentence ought to have been considered. To give a dry sentence of 4 years imprisonment to a first offender was not just harsh, but it is also a demonstration that the court ignored clear sentencing principles which dictate that for young persons, a chance to reform and rehabilitate them outside the prison must be surveyed before shutting them up in prison houses. A probation report should have been called for, to even investigate the young offenders personal and home circumstances in order to access with informed knowledge, how best to treat the offender.

It is for these reasons that I found the sentence excessive. The Appellant had served a substitute part of it which in my view was sufficient punishment.

The order setting aside the sentence of 4 years and releasing the Appellant forthwith as qualified, made on 12th February 2007 stands.

Dated at Nairobi this 14th day of March 2007.

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LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellant

Mrs. Kagiri for the Respondent

Tabitha: CC

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LESIT, J.

JUDGE