



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

**Criminal Appeal 695 of 2006**

**GEDEON NGUGI MAGONDO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(From the original decision in the Chief Magistrate Court at Kibera Crimina Case No. 5447 of 2006 – Maundu SRM)*

**JUDGMENT**

GEDION NGUGI MAGONDO, the appellant, was charged with another before the subordinate court with stealing contrary to section 275 of the Penal Code. The particulars of offence were that on the 10/9/2006 and 11/9/2006 at Kerarapon area in Kajiado District within the Rift Valley Province, jointly with others not before court stole 96 pieces of twisted iron (wire) 710 all valued at Kshs.48,000/= the property of Dr. Philip Harold Agola Nady. The appellant was recorded as having pleaded guilty to the charge on 7/11/2006. He was convicted and sentenced to 3 years imprisonment. He has now appealed to this court against sentence.

At the hearing of the appeal, the appellant submitted that he was asking for his sentence to be reduced.

The learned State Counsel, Ms. Gateru, conceded to the appeal on sentence. Counsel contended that the appellant pleaded guilty to the charge, and was a first offender, but was sentenced to the maximum sentence for the offence.

This is an appeal on sentence. Sentencing is essentially the discretion of the sentencing court. An appellate court will be slow to interfere with the exercise of that discretion unless it is shown that the sentencing court took into account an irrelevant factor or that it failed to take into account a relevant factor, or that it applied a wrong principle or short of these the sentence is so harsh and excessive that an error of principle must be inferred – see SHADRACK KIPROTICH KOGO –vs- REPUBLIC Criminal Appeal No.253 of 2003 Eldoret (CA).

In our present case, the maximum sentence is 3 years imprisonment. The appellant was a first offender. He pleaded guilty to the charge and therefore saved the court's time. This is not an aggravated offence that would call for the maximum sentence. In addition, there are the mitigating factors that the appellant was a first offender and he pleaded guilty, thus saving the court's time. In my view, if the learned magistrate would have taken into account all the above relevant factors, he would not have imposed the sentence of 3 years imprisonment. For that reason I will interfere with the exercise of discretion of the learned magistrate. Learned State Counsel has conceded to the appeal on sentence and, in my view, rightly so. The appellant was sentenced on 14<sup>th</sup> November, 2006 which is about one year now. I am of the view that the sentence already served is sufficient punishment.

For the above reasons, I allow the appeal set aside the sentence of the subordinate court and substitute therefore an order that the appellant's sentence be that already served up to the date of this judgment.

It is so ordered.

DATED and delivered at Nairobi this 21<sup>st</sup> November, 2007.

George Dulu

Judge