

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

Criminal Appeal 502 of 2006

BENSON NDUBA NJERI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

**(From the original decision in Gatundu Resident Magistrate's Criminal Case No. 553
of 2006 – A. Lorot RM)**

J U D G M E N T

BENSON NJUBA NJERI, the appellant, was charged before the subordinate court with the offence of stealing contrary to section 275 of the Penal Code. The particulars of offence were that on 24th April 2006 at Gatundu Township in Thika District within Central Province stole cash Kshs.4,000/= the property of **JAMES KYMANI NJOROGE** on being called upon to plead, the appellant was recorded as having pleaded guilty. He was convicted and sentence to serve 5 years imprisonment. Being dissatisfied with the subordinate court's decision, he has appealed to this court. His grounds of appeal challenge both the conviction and sentence. However, during the hearing of the appeal he merely asked for mercy, as he claimed to be 20 years old.

Learned State Counsel Mr. Makuta, conceded to the appeal on the ground that the sentence of 5 years imprisonment was illegal as the maximum sentence for the offence was 3 years imprisonment.

Indeed, the maximum sentence for theft under section 275 of the Penal Code (Cap. 63) on which the appellant was convicted is 3 years imprisonment. The learned magistrate sentenced the appellant to serve 5 years imprisonment, which was clearly an illegal sentence. I will therefore have to correct the illegality. The appellant was also not a first offender. However, since the maximum sentence for the offence is 3 years imprisonment, I will order that he serves 2 years imprisonment. Learned State Counsel conceded to the appeal and was right to do so.

Consequently, I allow the appeal on sentence, quash the sentence imposed by the learned magistrate and order that instead the appellant will serve a sentence of 2 years imprisonment from the date on which he was sentenced by the learned magistrate.

Dated and delivered at Nairobi this 19th day of November, 2007.

George Dulu

Judge

In the presence of ?

Appellant in person

Mr. Makura for State

Eric – court clerk