

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 295 OF 2003

(From Original Conviction and Sentence in Criminal Case No. 2372 of 2003 of the Chief Magistrate's Court at Mombasa J.S. Mushelle Esq., Senior Principal Magistrate)

JUMA ABITHOYA BAYA APPELLANT
- Versus -
REPUBLIC RESPONDENT

J U D G M E N T

The Appellant was charged before the Senior Principal Magistrate at Mombasa with the offence of stealing contrary to section 275 of the Penal Code. He pleaded guilty to the charge and was sentenced to three years imprisonment. He has appealed against that sentence. What he stole was a sum of Sh. 350,000/= being damages awarded to his minor child. Although he is a first offender he was given a maximum sentence. He is remorseful and he has been in prison for about one year. I also note that the trial magistrate did not consider the mitigating circumstances. Appellant says he is not feeling well and he has dependants including the complainant.

Considering all these factors I think the appellant has been punished enough. I reduce the sentence to the extent that he shall be released forthwith unless otherwise lawfully held.

DATED this 19th day of July 2004.

D.K. Maraga
Ag. JUDGE