

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 312 of 2003

(From original conviction (s) and Sentence(s) in Criminal case No. 1814 of 2002 of the Chief Magistrate's Court at Nairobi (El-Kindy - P.M.)

KENNETH MUNYUA IRUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant **KENNETH MUNYUA IRUNGU** was charged and convicted of the offence of **STEALING** contrary to **Section 279(a)** of the **Penal Code** before the Chief Magistrate Court at Nairobi. Having been found guilty he was sentenced to serve 3 years imprisonment with 6 strokes of the cane.

When this Appeal came for hearing on 6/12/04, he informed the court that he wished to appeal only against the sentence. He submitted that he had only two months to finish his sentence. That he was remorseful and has now reformed. That he had qualified as a Cobbler Grade III. That he had been given tools and that he wished to go and start working.

MR. OLENGO, learned counsel for the State submitted that he was opposing the Appeal as the accused was sentenced to 3 years imprisonment and that was not harsh or excessive in the circumstances.

He further submitted that the Appellant had not given any grounds to warrant the court to reduce the sentence and that the fact he's trained and had 2 months to go are not good grounds.

In reply the Appellant submitted that he had reformed and have equipments to start business with.

I have perused the records and made consideration of all relevant facts of this case. I have considered the fact that the Appellant has served a substantial part of his sentence and that he remains only with two months to finish the same. I have also considered the fact that he was rightfully convicted and was given a chance to mitigate.

In my judgment, I refer to the government policy of decongesting the prisons and find that since the Appellant remains only 2 months to finish his sentence, and that he is remorseful, and also considering the fact that he has gained skills and equipment to work as a Cobbler, allowing the Appeal to succeed with serve the interest of justice of this particular case.

I have also considered the government policy of "*a working nation*" and find that such work as he will do with his newly acquitted skills with enhance the said policy.

As such I allow the Appeal and order that the Appellant be released forthwith unless he is otherwise charged in connection with another offence.

Dated at Nairobi this 8th day of December 2004.

LESIIT

JUDGE

Read, signed and delivered in the presence of;

LESIIT

JUDGE