



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL APPEAL NO. 525 OF 2002**

**From Original Conviction and sentence in Criminal Case No. 204 of 2002 of  
The Snr. Resident Magistrate's Court at Kikuyu**

**PETER NDUNGU KIBUNYI.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The appellant pleaded guilty to the offence of stealing from a person c/s 279(a) of The Penal Code and on conviction he was sentenced to 24 months imprisonment with 4 strokes of the cane.

This appeal is against sentence only. The appellant was a first offender. The subject matter was KShs. 600/-. He is an orphan. The learned trial magistrate had asked for a probation officer's report. This was prepared and presented to the court. However the said report was never referred to by the learned trial magistrate in her note on sentencing.

I note that the probation officer's report was favourable to the appellant and no reason exists why he was not given that chance.

From the date he first appeared in court i.e. 12/2/2000 to date the appellant has not been free. He was sentenced on 6th May, 2002 which to date works up to about 8 months. The total period of incarceration is however about one year. I consider this sufficient punishment.

Accordingly this appeal is allowed by setting aside the sentence imposed by the learned trial magistrate and substituting the same with the period already served by the appellant. He shall receive one stroke of the cane.

Thereafter he shall be released from prison unless otherwise lawfully held.

Orders accordingly.

**Dated and delivered at Nairobi this 29th day of January, 2003.  
MBOGHOLI MSAGHA  
JUDGE**