



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO.651 OF 2002**

**(From Original Conviction and Sentence in Criminal Caser No.1914  
of 2001 of the Chief Magistrate's Court at Nairobi)**

**DAVID MULEI MWEU ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

Mrs. Kiarie for the appellant filed this appeal and argued all her grounds of appeal as one ground. While arguing her appeal Mrs. Kiarie abandoned her appeal against conviction and merely dealt on the question of sentence only. Mrs. Kiarie argued that the sentence of 3 years imprisonment which the appellant got from Miss Ndambuki Esq. a Senior Resident Magistrate was excessive given the fact that the appellant was a first offender.

Mr. Monda for the state left the question of sentence to the Courts discretion. I have perused the trial Magistrates records as to how the counts leading to conviction arose. I have considered the offence for which the appellant was convicted. The appellant was convicted and sentenced to 3 years imprisonment for the offence of stealing contrary to section 275 of the Penal Code. Although the value of the stolen property is listed and shown to be 38 worth 2.5 million it is not clear as to how the appellant benefited from the crime. No attempt to show how the appellant benefited from the crime was made by the prosecution. It is not therefore wrong for the trial magistrate to put a lot of reliance on the issue of the issue of the stolen property while giving the appellant the maximum sentence under section 275 of the Penal Code without considering that the appellant was a first offender.

I therefore review the appellant's sentence downwards so that the same is reduced from a sentence of three years to one of one and a half years imprisonment.

**Order accordingly.**

**R.M. MUTITU**

**JUDGE**

**9/1/2001**

**Delivered in the presence of Mrs. Kiarie for the appellant and in the  
presence of Mr. Okello for state.**

**R.M. MUTITU**

**JUDGE**

**9/1/2003**

