



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. 44 OF 2018

CAROLINE MWENDE MUTINDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the Judgment of Hon. M.K Mutegei (SRM) in the Senior Resident Magistrate's Court

at Tawa Criminal Case No.218 of 2018, delivered on 4th September 2018)

JUDGMENT

1. **Caroline Mwendu Mutinda** was on 28/08/2018 found guilty of the offence of stealing contrary to Section 275 of the Penal Code. She was said to have jointly with another stolen Kshs.2,000/=.
2. The learned trial magistrate called for a Probation Officer's Report which turned out to be negative. She was then sentenced to three (3) years imprisonment.
3. She filed this appeal contesting the sentence only.
4. When the appeal came for hearing, she asked the court to forgive her and have the sentence reduced.
5. The State through M/S Owenga has conceded the appeal on sentence. She submitted that the trial court should have considered an option of a fine for the Appellant.
6. I have considered the appeal, the grounds raised and the submissions by the Appellant and the State.
7. The record shows that the Appellant admitted the offence the first day she was arraigned in court.
8. There were no antecedents produced in respect of the Appellant. She is therefore assumed to have been a first offender.
9. The sentence of three (3) years imprisonment for a first offender and for theft of Kshs.2,000/= was uncalled for. This is despite the negative Probation Officer's Report.
10. The State does not support the sentence. She has already served eight (8) months imprisonment which is more than enough punishment for the offence.
11. **I therefore allow the appeal on sentence only which I set aside. I substitute it with the period already served.**
12. **The Appellant shall be set free unless otherwise lawfully held on a separate warrant.**

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 16TH DAY OF MAY 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE