



**REPUBLIC OF KENYA**

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

**HCCRA NO. 37 OF 2018**

**SILAS KIBET KOMEN.....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

***(An appeal from the original sentence of the Principal Magistrate's Court at***

***Kabarnet Cr. Case No. 702 of 2017 delivered on the 22<sup>nd</sup> June 2018 by Hon. S. Temu, PM)***

**JUDGMENT**

1. The Appellant was on 22<sup>nd</sup> June 2018 sentenced to imprisonment for two years following conviction for the offence of stealing by servant contrary to section 281 of the Penal Code and ordered to pay compensation in the sum of Ksh.107,000/- being the value of the motor cycle subject of the charge. The appellant did not challenge his conviction but sought a lenient sentence pointing out that he was, with remission, set to complete his sentence in October 2019 and he had a breadwinner role for his mother wife and two children.
2. The DPP did not oppose the appeal from sentence considering that the Appellant was about to complete his sentence and had therefore learnt his lesson, and that as he was unable to make the payment the value of the lost motor cycle, the court complainant may be advised to seek civil redress in a Civil Court.
3. The Court had unsuccessfully attempted a reconciliation between the Appellant and the Complaint who is his uncle, when the latter declined to accept proposals for payment by the Appellant who said he had no means to pay the amount in lump sum as demanded by the uncle, and proposed to pay in money and money's worth the value of the said motor cycle.
4. I would agree with the DPP that having served, with remission, his sentence shy only by one month, the Appellant has learnt his lesson, and consequently, pursuant to section 354 (3) (b) of the Criminal Procedure Code review his sentence to the time he has already served so that he is released from custody immediately.

***Order for compensation***

5. The order for compensation was properly made by the trial court pursuant to section 175 (2) of the Criminal Procedure Code which provides as follows:

“A court which –

- a) Convicts a person of an offence or, on appeal, revision, or otherwise, confirms the conviction; and
- b) Finds on the facts proven in the case, that the convicted person has, by virtue of the act constituting the offence a civil liability to the complainant or another person (in either case referred to in this section as the “injured party”),

***may order the convicted person to pay to the injured party such sum as it considers could justly be recovered as damages in civil proceedings*** brought by the injured party against the convicted person in respect of the civil liability concerned.”

6. I have not heard any grounds for suggesting that the order for payment of the value of the motor cycle was improperly made on any grounds set out in sub-section (3) of section 175 of the Criminal Procedure Code, and the order is therefore affirmed under section 175(5) of the Criminal Procedure Code.
7. The complainant is not without a remedy and he may recover his full “pound of flesh” in accordance with section 175 (6) of the Criminal

Procedure Code which provides as follows:

**“(6) An order under this section that has taken effect [upon expiry of time for, or upon determination of, an appeal from conviction or sentence] is enforceable in the same manner as a judgment in civil proceedings for the amount awarded in the order.”**

8. Having served his sentence of imprisonment, the Appellant is, however, not free from obligation to pay the complainant the value of his motor cycle, but this falls to be executed as a judgment of a civil court, and the criminal court process has now run its full course.

#### **ORDERS**

9. Accordingly, for the reasons set out above, the court, without altering the finding of the trial court on conviction, makes an order that the appellant pursuant section 354 (3) (b) of the Criminal Procedure Code, reducing the Appellant’s sentence to the period already served and consequently direct that the Appellant be released from custody forthwith.

10. The Complainant is advised to seek legal advice as to how to pursue his interests in accordance with section 175 (6) of the Criminal Procedure Code.

*Order accordingly.*

**DATED AND DELIVERED THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2019.**

**EDWARD M. MURIITHI**

**JUDGE**

#### **Appearances:**

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent.