

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: MAJANJA J.

CRIMINAL APPEAL NO. 60 OF 2018

GEOFFREY NYABUTO OSORO APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from the original conviction and sentence of Hon. N. Wairimu – PM dated 23rd February 2017 at the Principal Magistrate’s Court at Ogembo in Criminal Case No. 1 of 2017)

JUDGMENT

1. The appellant, GEOFFREY NYABUTO OSORO was charged with the offence of stealing contrary to section 268 as read with section 275 of the Penal Code (Chapter 63 of the Laws of Kenya). The particulars that with his co-accused, he did steal a motorcycle Registration No. KMDH 677B valued at Kshs. 70,000/=, the property of DENNIS ONDATI. He pleaded guilty and was sentenced to three (30 years imprisonment.

2. This appeal is against sentence only and I note that under section 275 of the Penal Code, the maximum sentence for stealing is three years imprisonment. The court ought not impose the maximum sentence on a first offender particularly where he does plead guilty and has no criminal antecedents.

3. In view of the period spent in custody, I quash the sentence and substitute it with a sentence equivalent to time served. The appellant is therefore set free unless otherwise lawfully held.

Dated and delivered at Kisii this 12th day of October, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.

Appellant in person.