



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISUMU**  
**CRIMINAL APPEAL NO.2 OF 2016**

**BETWEEN**

NERBERT ODHIAMBO MACRIMBO.....1<sup>ST</sup> APPELLANT

JONATHAN OTIENO ONYANGO.....2<sup>ND</sup> APPELLANT

AND

REPUBLIC.....RESPONDENT

*[Being an Appeal from Original Conviction and Sentence from Kisumu Chief Magistrates Court, M. Agutu, RM in Criminal Case No. 748 of 2015 dated 28<sup>th</sup> December 2015]*

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

1. The appellants **NORBERT ODHIAMBO MACRIMBO** and **JONATHAN OTIENO ONYANGO** were charged with stealing contrary to **section 208** as read with **section 275** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. They also faced an alternative count of handling stolen goods contrary to **section 322(1) and (2)** of the **Penal Code**.
2. They are said to have stolen 6 iron sheets valued at Kshs.4,200/= being the property of **JULIUS AYOMA** on 25<sup>th</sup> December, 2015 at 2.00am at Kanyakwar in Kisumu East, Kisumu County. They later pleaded guilty and were sentenced to serve 2 years imprisonment. They appealed against conviction and sentence.
3. At the hearing of this appeal they only pleaded their cases based on the sentence. I am aware that the appellate court should not interfere with the sentence imposed by the trial court unless the trial court has made an error of principle, taken into account irrelevant facts or failed to consider material facts.
4. In this case, given the nature of the offence, the fact that they were first offenders and that they had pleaded guilty expressing remorse, the court failed to consider whether a non-custodial sentence was suitable.
5. The appellants have served 6 months in prison and have learnt their lesson. I allow the appeal on sentence and substitute the same with a suspended sentence for the balance of the term. Should the appellants commit any offence, they shall be committed to prison to serve the remainder of the sentence.
6. They are accordingly released unless otherwise lawfully held.

**DATED, SIGNED and DELIVERED** at **KISUMU** this 18<sup>th</sup> day of July, 2016.

**D. S. MAJANJA**

**J U D G E**

Appellant in person.

Ms Chelangat, Prosecution Counsel instructed by the Director of Public Prosecutions for the respondent.