



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**HCRA NO .103 OF 2012**

**CLEMENT MARIKO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

(Being an appeal from original conviction and sentence in Narok C.M Criminal Case No.578 of 2012 by **Hon C A Nyakundi, P.M** dated 2<sup>nd</sup> May 2012)

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

- 1.The appellant was charged with stealing from the person of another contrary to **section 279 (a)** of the penal Code.
2. He pleaded guilty to the offence and was convicted. The appellant admitted to these facts but said in mitigation that the complainant was his wife and his mother was sick.
3. He was sentenced to 3 years imprisonment.
4. Under section 348 of the criminal procedure code, a person who pleads guilty and is convicted and sentenced on his own plea of guilty, can only appeal on grounds of either legality or extent of sentence. The appellant appears to be aware of this, as his grounds of appeal are only on mitigation

**GROUND OF APPEAL**

- 5.(i) The appellant pleaded guilty to the charge.
  - ii. The court failed to consider his health status. He had suffered from epilepsy since 1996 and his condition is worsening.
  - iii. The appellant is and only child and the one caring for his mother who sustained spinal injuries during the post-election violence in 2008.
- (iv) That the appellant committed the offence under the influence of alcohol and is remorseful.
- v. That the lower court did not consider a non-custodial sentence over the three (3) years of imprisonment.
- vi. The conviction and sentence was unconstitutional as the offence committed was aimed at reconciling the family.
- vii. That the appellant is a first offender.

## **ISSUE FOR DETERMINATION**

6 (i) Sentence

### **ANALYSIS**

7. In his petition for appeal, all that is contained therein is mitigation as to why the court should reconsider the sentence and be lenient to him. Mr Marete, counsel who appeared for the state did not oppose the appeal on sentence. The appellant had been convicted of stealing from his wife and he was of the opinion that the sentence was too harsh even if the maximum sentence under section 279(a) of the penal code was 14 years imprisonment. He urged the court to consider a custodial sentence in place of the three years imprisonment.

### **FINDINGS**

8. The trial Magistrate reached a correct finding and sentenced the appellant within the stipulated period under the penal code of 14 years maximum imprisonment period.

I have however taken into consideration that the Appellant has served a period of 1 year 6 months upto October 2013 and is left with about one and a half years if he is granted remission.

The appellant stole from his wife. They have children together and his mother is unwell. The presence of the appellant at home will be good for his children and his ailing mother and hopefully he will be able to reconcile with his wife. This court will exercise its discretion and sentence the appellant to the term already served.

### **CONCLUSION**

The appeal against sentence is allowed to that extent and the appellant is released from prison forthwith unless otherwise lawfully held.

**Dated signed and delivered this 8th day of November 2013.**

**L N WAITHAKA**

**JUDGE**

**PRESENT**

Mr Marete for the state

Appellants: Clement Mariko

Emmanuel Maelo: Court Clerk.

**L N WAITHAKA**

**JUDGE**