

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CRIMINAL APPEAL NO 87 OF 1988

JULIUS AMBANIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction & sentence (I Indech, Esq, RM) in Criminal Case No 405 of 1988 of the Principal Magistrate's Court at Mombasa)

JUDGMENT

Julius Ambani, the appellant in this appeal, was sentenced to 2 years imprisonment on a charge of stealing by servant contrary to section 281 of the Penal Code. He was alleged to have stolen one pair of shorts valued at Shs 40/-, the property of Messrs Egatex Co Ltd his employers, on the 29th January, 1988. His appeal is against sentence.

The appellant was a first offender. The pair of shorts was recovered. He pleaded guilty to the charge on his first appearance in court. He indicated to the trial court that he had a family which depended on him for their needs. The value of the item stolen was minimal that I do not consider the exercise on discretion by the trial court in sentence was proper. Although as rightly pointed out by the trial magistrate that the appellant abused the trust which was bestowed on him by his employer, the item stolen was of so negligible a value that he did not deserve the harsh treatment which the court gave him. Sentences imposed on accused persons must be commensurate to the moral blameworthiness of the offender. Here was a man who may have been tempted to sneak away with an item belonging to his employer. He had a family which depended on him. His imprisonment must have adversely affected that family because they lost the support which the appellant had been offering. It is an improper exercise of discretion not to look on the facts and circumstances of the case in their entirety before settling for any given sentence, as appears to have been the case here. I am compelled to interfere with the sentence meted out to the appellant. The appellant has served more than one year of the sentence which was imposed on him having been sentenced on the 1st February, 1988. I consider that sentence suffices. Consequently I will set aside the sentence of two years imprisonment and in lieu thereof substitute such sentence as will permit the appellant's immediate release from prison unless he is otherwise lawfully held on another warrant.

Dated and Delivered at Mombasa this 17th March, 1989

S.E.O. BOSIRE

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JUDGE