

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**CRIMINAL APPEAL NO. E019 OF 2022**

**ROBERT MUKOKO.....APPELLANT**

**JUMA**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Being an appeal on sentence in Chief Magistrate's Court at Bungoma in Criminal Case No. E167 of 2022 by Hon. G.P. Omondi (PM) delivered on 17th February 2022).

**JUDGEMENT**

**A. BACKGROUND**

1. The Appellant, **Robert Juma Mukoko**, was charged with the offence of stealing contrary to Section 268(1) as read with section 275 of the Penal Code. The particulars were that on **23<sup>rd</sup> February 2022** at Khasoko Location, Bumula Sub-County within Bungoma County stole a cow valued at Kshs. 11,500/= the property of **Pius Mukhwana Oduor**.
2. The Appellant was arraigned before the magistrate's Court at Bungoma in criminal case No. E167 of 2022 on **7<sup>th</sup> February 2022**. He pleaded guilty to the charge.
3. The record then shows that he said "**Ni ukweli. It is true**". **A** plea of guilty was entered by the trial Court. The Respondent thereafter read the facts and produced the exhibits. Upon being asked whether the facts were correct, the Appellant answered in the affirmative and stated that the

facts were correct. The Appellant was then convicted on his own plea of guilt.

4. Before the trial Court pronounced the sentence, the Prosecution/Respondent indicated that it had no previous records for the Appellant. In his mitigation, the Appellant pleaded for leniency and noted that it was his first time that he had been in conflict with the law and that he did not intend to repeat the offence. The trial Court requested for a pre-sentence report. The pre-sentence report was availed but was not positive as the Appellant was termed as a habitual thief who steals from his family and the community.
5. The report further indicated that the Appellant was not a straightforward man, was a liar and it recommended a custodial sentence. On the strength of this report, the trial Court sentenced the Appellant to 6 years imprisonment.

## **B. APPEAL**

6. The Appellant being dissatisfied with the sentence of the trial Court, filed an undated Petition of Appeal on **28<sup>th</sup> February 2022**. The appeal sought a sentence reduction and that he be placed on probational terms.
7. The Respondent is unopposed to the instance appeal and contends that since the Appellant has served half of his sentence, this Court ought to find that the purpose of the lower Court's sentence has been served.
8. The appeal was canvassed through written submissions. Only the Respondent complied with the Court directive.

## **C. ANALYSIS AND DETERMINATION**

9. In determining this appeal, this Court is fully aware of its duty as the first appellate Court as espoused in the case of **Okeno Vs R (1972) EA 32** where the Court stated: -

**“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion”.**

10. Having carefully re-evaluated and re-analysed the proceedings on the trial Court’s record, the grounds of appeal and the Respondent’s submissions on the appeal, the issue for determination by this Court is whether the Appellant has made a case for this Court to interfere with the sentence imposed on him by the trial Court.

11. The Appellant was charged with the offence of stealing contrary to **Section 268 (I)** of the Penal Code provides that:

**“(I)A person who fraudulently and without claim of right take anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property”.**

12. **Section 275** of the penal Code also provides:

**“Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.”**

13. The Appellant pleaded guilty to the charges as read out to him and confirmed the facts to be correct. He was thus

convicted on his own plea of guilt and sentenced in accordance with Section 275b of the Penal Code to 6 years imprisonment.

14. The Appellant is only challenging sentence which he faults to be manifestly harsh and excessive. The Appellant seeks to have the sentence reduced or he be set free. The Respondent unopposing the appeal noted that the Appellant has already served 3 years of his sentence.

15. This Court is empowered by Article 165(6) of the Constitution of Kenya to review a decision by a subordinate Court under Article 165(6) provides: -

**“The High Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior Court.”**

16. Section 362 of the Criminal Procedure Code provides: -

**“The High Court may call and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate Court.”**

17. Section 364(1) of the Criminal Procedure Code provides: -

**“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may-**

- a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence**
- b. in the case of any other order other than an order of acquittal alter or reverse the order.**

**(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.”**

18. I have observed that the Appellant pleaded guilty to the charges as presented against him by the Respondent. He was found to be a first offender although the pre-sentence report showed that he was a habitual thief for which the trial Court relied to sentence him to the maximum sentence provided for by the law.
19. I have also considered the Appellant’s mitigation on record, the value of the cow which is Kshs.11,500/= and the fact that he pleaded guilty thus saving on the precious judicial time and resources and I find that the imprisonment term already served by the Appellant to be reasonable and sufficient punishment. I will order that the Appellant to be released forthwith from prison unless otherwise lawfully held.

Orders accordingly.

**Delivered, Signed and Dated at Bungoma this 17<sup>th</sup> day of December 2025.**

**M.S.Shariff**  
**Judge**

**In the presence of:**

**APPELLANT**  
**MS KIBET FOR RESPONDENT**  
**PETER MACHONI - COURT ASSISTANT**