



REPUBLIC OF KENYA



**Musyoka v Republic (Criminal Appeal E055 of 2022)
[2023] KEHC 1048 (KLR) (21 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E055 OF 2022
GMA DULU, J
FEBRUARY 21, 2023**

BETWEEN

MBITHI MUSYOKA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the original judgment of Hon. J.D Karani in Makindu Senior
Principal Magistrate's Court SPMCR Case No.E127 of 2022 pronounced on 4th April 2022)*

JUDGMENT

1. The appellant was convicted in Makindu SPM Criminal Case E127 of 2022, on his own plea of guilty to a charge of stealing livestock contrary to section 278 of the *Penal Code*. The particulars of the offence were that with one Alex Mutiso Mutunga on 12/02/2022 at Ndauni area in Kibwezi Sub-County within Makueni County, jointly with another not before court stole six sheep and six goats all valued at Kshs.78,000/= the property of Christine Mumbua Edward.
2. When he appeared in court on 21/02/2022, he pleaded guilty to the charge, but his co-accused pleaded not guilty.
3. Thereafter, on 21/03/2022, the facts were summarized by the prosecutor, and the appellant agreed to the facts and was convicted.
4. He was thus convicted and sentenced to serve 3 years imprisonment.
5. In another related case, Makindu SPM Criminal Case No. E125 of 2022, the appellant was convicted on his own plea on two counts. Count I was for stealing stock contrary to section 278 of the *Penal Code*, the particulars of which being that on diverse dates between December 2021 and 1 February 8, 2022 at Ndauni area, in Kibwezi Sub-County of Makueni County, jointly with another not before court stole eighteen goats all valued Kshs.126,000/= the property of Josephine Ndunge Nyamai.



6. He also pleaded guilty to a second count of killing an animal with intent to steal contrary to section 289 of the [Penal Code](#), the particulars of which being that on 18/02/2022 at Ndauni Village, Kibwezi Sub-County with another not before the court killed a goat valued at Kshs.4,000/= with intent to steal the carcass the property of Josephine Ndunge Nyamai.
7. He was thus convicted on his own plea, and sentenced on 04/04/2022 to 3 years imprisonment on each of the two (2) counts, sentences to run consecutively.
8. The appellant has now come to this court on appeal on sentence only, claiming that he is a person of tender age and is remorseful and repentant.
9. The Director of Public Prosecutions has opposed the appeal, and emphasized that under section 278 of the [Penal Code](#) relating to stealing stock, the maximum statutory sentence is 14 years imprisonment, under section 289 of the [Penal Code](#) for killing an animal with intent to steal, the maximum sentence is the same as for stealing the animal.
10. The Director of Public Prosecutions has cited a number of cases on principles of sentencing, including [Benson Nkaramata Sakita v Republic](#) (2018) e KLR and [SKM v Republic](#) (2021) e KLR.
11. Indeed, the magistrate was correct in stating that the offence of stealing livestock is rampant in the area. However, the incidences relating to the offences appear to be closely connected, almost making them one offence. In those circumstances, in my view, and the fact that some of the stolen livestock were found, a concurrent sentence would be adequate punishment to this appellant who pleaded guilty to all the charges and did not waste court's time.
12. I thus find merits in the appeal against sentence. I order that the sentences imposed will run concurrently, thus the appellant will serve a total of three (3) years imprisonment from 21/03/2022, the date he was first sentenced by the trial court.

DELIVERED, SIGNED & DATED THIS 21ST DAY OF FEBRUARY 2023, IN OPEN COURT AT MAKUENI.

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George Dulu

Judge

