



REPUBLIC OF KENYA



**Nandasaba v Republic (Criminal Appeal E54 of 2022)
[2023] KEHC 1805 (KLR) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1805 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E54 OF 2022
JWW MONG'ARE, J
FEBRUARY 22, 2023**

BETWEEN

HENRY JUMA NANDASABA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence of Hon R Odenyo
in Eldoret CMCC No. 2197 of 2019 delivered on 8th March, 2022)*

JUDGMENT

1. The Appellant was charged with the offence of stealing stock contrary to section 278 of the [Penal Code](#). The particulars of the offence were that on the night of the 28th and 29th day of June, 2019 at Soy Navillus in Soy Sub County within Uasin Gishu County, jointly with others not before court stole twelve cows valued at Kshs.800,000/- the property of Jane Chemeli Samoei.
2. The Appellant pleaded not guilty and the matter proceeded to full hearing. Upon considering the testimonies of the witnesses and the evidence adduced in court, the trial magistrate found the Appellant guilty and sentenced him to 7 years imprisonment.
3. Being aggrieved with the sentence, the Appellant instituted the present appeal vide a petition of appeal filed on 17th March, 2022. The appeal is premised on the following grounds;
 1. That (I) am a first offender, repentant and remorseful for the offence.
 2. That (I) pray for this court to make a consequential order for section 333(2) to be observed in (my) sentence for (I) spent more than 2 ½ years in remand.
 3. That I am sick, a known sight problematic, who finds it very hard to acquire to be adduced at the hearing of this appeal.



4. That, more grounds to be adduced at the hearing of this appeal.

The parties canvassed the appeal by way of written submissions.

Appellant's Case

4. The Appellant submitted he was arrested on 15th July, 2019 and convicted on 8th March, 2022 after spending 2 years, 7 months and 23 days in custody, which period was not computed in his sentencing. He urged that this was a violation of his constitutional rights and under section 333(2) of the Criminal Procedure Code the period spent in remand should be considered. He relied on the case of Vincent Sila Jona (2021) KEHC in support of his submission.
5. The Appellant stated that he has a known sight problem and has been crippled due to an injury on his leg caused by an accident. He has undergone serious physical pain and psychological torture as he is a poor man. He submitted that he is remorseful that given a second chance he will be a law-abiding citizen. He prayed that the court allow his appeal.

Respondent's Case

6. The Respondents opposed the appeal on the premise that section 278 prescribes a maximum sentence of 14 years for the offence of stealing stock and therefore the sentence meted out was lenient. Further that there was a need to impose a deterrent sentence on stock theft which has been a menace in the country. Counsel urged the court not to disturb the sentence.

Analysis & Determination

7. As the first appellate Court, I am duty bound to re-evaluate and reconsider all the evidence adduced during the hearing afresh and come to my own conclusions about all the elements of the crimes charged. See *Okeno v Republic* [1973] E.A. 32; *Pandya vs. R* (1957) EA 336, *Ruwala vs. R* (1957) EA 570.
8. Although the Plaintiff pleaded not guilty he has not challenged the conviction here. I will therefore limit myself to the Appeal herein which is against the sentence. I also note that accused submitted that he was in custody throughout the period of the trial and that prior to his conviction and sentence he spent 2 years 7 months having been arraigned in court on 15th July, 2019 and then finally convicted and sentenced on 8th March, 2022. He has urged the Court to consider this period and include it as part of his sentence in accordance with the Constitution of Kenya Article 27 and section 333(2) of the Criminal Procedure Code.
9. I find therefore that this court should address the following issue which arises for determination;
 1. Whether the sentence was harsh/excessive

Whether the sentence was harsh/excessive

10. Section 278 of the Penal Code states as follows;

If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, whether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.

11. I have perused the record of appeal, the judgment and all the submissions by the parties and I note that the trial court upon conviction sentenced the appellant to serve 7 years custodial sentence instead of



the mandatory 14 years imposed by the law. I am persuaded that in arriving at this sentence the trial court must have considered the mitigating plea by the appellant. I am satisfied that the sentence by the trial court is commensurate with the offence and I find no reason to interfere with it.

12. However, it is not clear whether the trial court factored in the time spent in custody by the Appellant as is required by section 333(2) of the Criminal Procedure Code. However, in line with the provisions of Section 333(2) of the penal code, it is prudent to point out that the sentence so imposed on the Appellant must take into account any time spent in custody during the trial. As such, the sentence shall be calculated to run from the date the Appellant was remanded, 15th July, 2019.
13. The upshot of my findings above is that the appeal herein is unmerited and is dismissed forthwith. The appellant will serve the remainder of his term as sentenced by the trial court taking into account the above considerations. It is so ordered.

DELIVERED, DATED AND SIGNED ON THIS 22ND DAY OF FEBRUARY 2023

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J.W.W.MONGARE

JUDGE

Delivered virtually in the presence of

1. Appellant-absent
2. Mr. Rop holding brief for Ms. Okok for the Respondent
3. Brian Kimathi – court assistant

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J.W.W.MONGARE

JUDGE

