



REPUBLIC OF KENYA



**Kambi v Republic (Criminal Appeal E008 of 2021)  
[2023] KEHC 18887 (KLR) (26 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 18887 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL APPEAL E008 OF 2021**

**SM GITHINJI, J**

**APRIL 26, 2023**

**BETWEEN**

**ISAAK MOHAMED KAMBI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from original conviction and sentence in lower court Criminal Case file  
No. E211 of 2020 in the SRM's Court at Mariakani before Hon S.K.Ngii – SRM)*

**JUDGMENT**

**CORAM:** Hon. Justice S. M. Githinji

Appellant in person

Miss Ochola for the State

1. Isaac Mohamed Kambi was charged in the lower court with a main count of stealing stock contrary to section 278 of the [Penal Code](#).
2. The particulars of this offence are that on the December 13, 2020 at around 1200hours at Busho area, Kilibazi Sub-Location, Macknon Location, Kinango Sub-County of Kwale County within Coast region, the Appellant together with another not before court stole 8 sheep valued at Kshs 32,000/= property of Dzame Kizigwa.
3. In the alternative, the appellant faced a charge of handling stolen goods contrary to section 322 (1) (2) of the Penal Code. The particulars hereof being that on December 13, 2020 at around 1800hours along Kinango Sub-County of Kwale County, the appellant otherwise than in the cause of stealing dishonestly retained 8 sheep valued at Kshs 32,000/- having reason to believe them to be stolen goods.



4. On December 15, 2020 the appellant was arraigned in court to answer to the charges. When the offences were stated to him by the Court in Swahili language, he pleaded guilty to the offence in the main count.

5. The Court consequently entered a plea of guilty on his behalf.

The prosecutor stated the facts as follows; -

' On December 13, 2020 at 6.00 Pm the accused person was rescued by police officers from mob justice after he was found with stolen sheep. Eight (8) in number. He was driving the sheep. The sheep had been stolen by the accused from two children who were grazing them after he duped them to go home and call their owners allegedly because the sheep had trespassed into his land. The accused was in company of another man who escaped. The photographs of the sheep were produced as P-Exhibit – 1. The sheep belonged to the complainant. Dzama Kizigira, who after being called by the children who were herding the sheep went to the field but found the sheep missing.'

6. To the foregoing facts, the appellant stated that they were correct. He was convicted on his own plea of guilty by the trial court. In mitigation he stated that he was an orphan. He had a family of two children and prayed for forgiveness.

7. The court observed that for the offence the convict would be liable to imprisonment for 14 years. It however noted that he was a first offender and had offered some mitigation. Taking cognizance of the prevalence of the offence in the region and need to deter like-minded members of the society, the appellant was sentenced to serve 5 years imprisonment.

8. Though the appellant filed an appeal against the sentence, he appears to have been inclined towards a review of the sentence as all he offered in this application is additional mitigating factors in his prayer for a more lenient sentence. He avers that he is the sole bread winner for his young family. He is a first offender, he is remorseful and pleads with the court to accord him a second chance.

9. The appellant herein is a first offender. He pleaded guilty and thus saved the prosecution and court the hearing time as well as resources for availing witnesses. The stolen sheep were all recovered and the complainant lost nothing in the offence. The appellant pleaded that he is an orphan with a young family. Given the foregoing circumstances he deserved a more lenient sentence than the five years custodial sentence he got, probably even a non-custodial sentence. The sentencing policy at paragraph 7.18 *on 'custodial versus non custodial sentences*, states;-

' Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offender serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.'

10. The appellant has been in custody since December 15, 2020. He says he is reformed and wishes to reunite with his family and never to repeat the offence. The period served is sufficient punishment for the offence given the circumstances. I therefore allow the appeal and reduce the sentence of 5 years imprisonment to period so far served in custody. The appellant should therefore be set free.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 26<sup>th</sup> DAY OF APRIL, 2023**



.....

**S.M.GITHINJI**

**JUDGE**

**In the Presence of; -**

1. Appellant
2. Mr Mutua for the Respondent

