



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL APPEAL NO. E005 OF 2021

KELVIN LEPARSHAU JAJIRI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Appeal from the original conviction in Criminal Case No. 313 of 2019 in the Senior

Principal Magistrates Court at Kigumo by K. Sambu, SPM, dated 16th February 2021]

JUDGMENT

1. The appellant pleaded guilty to two counts: Conspiracy to effect unlawful purpose contrary to section 395 (f) of the **Penal Code**; and, stealing stock contrary to section 278 of the Code. He was imprisoned for *two* and *seven* years respectively. The terms were to run *concurrently*.
2. On 5th May 2021, the appellant was granted leave to lodge the petition out of time. The appeal is only on *sentence*. At the hearing of the appeal on 16th March 2022, the appellant *confirmed* as much.
3. The appellant is a first offender and pleaded for *leniency*. He said he is remorseful for his actions. He stated that he was looking for a job when he was misled by accomplices to load four stolen cows onto a vehicle. He also faults the lower court for not crediting him with the period spent in custody. In a synopsis, the entire appeal is a plea for mercy.
4. The appeal is contested by the Republic. However, learned Prosecution Counsel, *Ms. Muriu*, conceded that the period spent in remand should have been deducted from the sentence.
5. This is a first appeal to the High Court. I have re-evaluated the record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
6. I am satisfied that the plea of guilt was *unequivocal*. I have also stated that the appellant does not challenge his conviction.
7. Section 354 (3) of **Criminal Procedure Code** empowers the court to *alter the finding, maintain the sentence, or with or without altering the finding reduce or increase the sentence*. The parameters were well set out in *Macharia v Republic* [2003] 2 E.A 559.
7. The learned trial Magistrate considered that the appellant was a *first offender* and was *remorseful*. I find that the two sentences were well within the law. The plea for clemency before this court must be looked at through those lenses. Although the trial court was alive that the appellant had been in remand for two years, it did not *expressly* credit him with that time.
8. I will thus uphold the conviction and sentence. However, the period spent in custody from 10th March 2019 to 15th February 2021 shall now be *deducted* from *each* of those sentences. For the avoidance of doubt, both sentences shall run *concurrently*.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 21ST DAY OF APRIL 2022.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

Appellant.

Mr. Waweru for the Republic.

Ms. Susan Waiganjo, Court Assistant.