



REPUBLIC OF KENYA



**KENYA LAW**  
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**Musyoki v Republic (Criminal Appeal E062 of 2021)  
[2022] KEHC 10498 (KLR) (28 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E062 OF 2021**

**GMA DULU, J  
JUNE 28, 2022**

**BETWEEN**

**DOMINIC KISILU MUSYOKI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. Sagero in Makueni  
Chief Magistrate's Court CMCR Case No.E078 of 2021 pronounced on 6th April 2021)*

**JUDGMENT**

1. The appellant was charged in the subordinate court with stealing stock contrary to section 278 of the Penal Code. The particulars of offence were that on 2<sup>nd</sup> April 2021 at unknown time at Mweleli Village, Kalawa Location in Mbooni East Sub-County within Makueni County stole one she goat valued at Kshs.5,000/= the property of Elizabeth Matheka.
2. He pleaded guilty to the charge and was sentenced to serve five (5) years imprisonment.
3. Dissatisfied with the sentence imposed by the trial court, the appellant has come to this court on appeal against sentence on the following grounds –
  - 1) That he pleaded guilty to the offence.
  - 2) That he was used by the butchery and another person in the offence.
  - 3) That he is the only bread winner of the family.
  - 4) That he is remorseful and regretful for the offence.
  - 5) That he asks this court to set him at liberty.



4. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the appellant and those filed by the Director of Public Prosecutions.
5. This is an appeal on sentence only. Sentencing is an exercise of discretionary power by a trial court based on the facts and circumstances of each case. I note that the Director of Public Prosecutions has cited the case of *Alfred Ochieng –vs- Republic* – Criminal Appeal No. 36 of 2016 wherein the learned Judge dismissed an appeal on sentence of 3 year imprisonment, while noting that the maximum sentence for stock theft was 14 years imprisonment.
6. Though the appellant has stated herein on appeal that he is the sole breadwinner of the family and was used by the butchery, he did not say so before the trial court. In mitigation he actually said that – “I pray for release to go and pay the complainant”.
7. Having said as above, however, it is clear to me that the appellant pleaded guilty to the charge straight away and did not waste the court’s time. The livestock stolen was also a single she-goat worth Kshs.5,000/=, and he suggested in mitigation that he was ready to pay the complainant for the goat. He was a first offender.
8. In my view therefore, considering the facts and circumstances disclosed to the trial court, a sentence of 3 years imprisonment would be adequate sentence or punishment in the circumstances. I thus find that the sentence of 5 years imprisonment imposed was excessive and I will substitute it with a sentence of 3 years imprisonment.
9. Consequently and for the above reasons, I allow the appeal on sentence. I set aside the sentence of the trial court, and order that instead, the appellant will serve 3 years imprisonment from the date he was sentenced by the trial court.

**DELIVERED, SIGNED & DATED THIS 28<sup>TH</sup> DAY OF JUNE, 2022, IN OPEN COURT AT MAKUENI.**

.....

**GEORGE DULU**

**JUDGE**

