



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

HIGH COURT CRIMINAL APPEAL NO E002 OF 2021

FANUEL MUTONYI MWENDO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the original sentence by Hon. M. Munyekenye (S.P.M) in

Webuye Law Court's Criminal Case No. E014/2020 on 24/12/2020)

JUDGMENT

1. The Appellant Fanuel Mutonyi Mwendo, was charged in the Senior Principal Magistrate's Court at Webuye for the offence of stealing stock contrary to **section 278B** of the **Penal Code**. The record indicates that when the charge was read over and explained to him the Appellant admitted it and the court convicted him on his own plea of guilty.
2. The Appellant further admitted the facts as narrated by the State that on 30th September, 2020, the Complainant was alerted by the bleating of the sheep she had left in her kitchen. She went to the kitchen and found the sheep missing. She went to the market the next day and found the Appellant in the process of trying to sell her sheep.
3. In his mitigation the Appellant asked for forgiveness. The court set the matter for mention in one week's time and called for a Probation Officer's presentencing report. Meanwhile the Appellant was released on a bond of ksh50,000/= with one surety, or in the alternative a cash bail of ksh30,000/=.
4. When the probation report was eventually produced, the Court asked the Appellant whether he had any prior convictions to which he replied in the negative, stating that he had never been charged in court before. Both the presentencing report by the Probation officer and the Criminal Register however, indicated that the Appellant had earlier been convicted in Criminal Case No.824 of 2016 and sentenced to serve one year on probation. For the foregoing reasons the Court found the Appellant to be a repeat offender and a dishonest person and sentenced him to seven (7) years imprisonment.
5. The Appellant subsequently brought this appeal which in essence is his mitigation. He also pleaded for a review of his sentence to reduce the period of imprisonment. In both his mitigation and in his submissions, the Appellant states that he is remorseful, is a first offender and is a single parent. The Appellant also states that the police forced him to accept the charges and further that the Court violated his right by convicting him without considering that he had little education. Lastly that the court leaned on the side of the prosecution witnesses who held grudges against him.
6. I have set out the background of this appeal since in some of his grounds it would appear that the Appellant was trying to retract his plea of guilty. The detailed procedure of recording a plea of guilty from an accused person was set out in the locus classicus case of **Adan v R (1973) EA 445 at pg 446-447**. Following the said procedure, I observe that the substance of the charges was read and every element thereof explained to the Appellant in Kiswahili language which he understood. The court did record his response in Kiswahili language and entered a plea of guilty.
7. The Prosecution read the facts of the case to which the Appellant responded that the facts were true before the Court recorded that he had been convicted on his own plea of guilty. In light of the above, I find that the plea was unequivocal. In any case, in his address to this court during the hearing of his appeal the Appellant stated that he was not contesting the conviction but was only asking the Court to review the sentence imposed against him downwards.
8. The appeal was opposed by the state on grounds that the Appellant pleaded guilty to the charge of Stealing Stock which carries a maximum sentence of fourteen (14) years in prison. The learned magistrate did give justification for the sentence of seven (7) years in prison, stating that the Appellant was a repeat offender having been placed on one (1) year probation earlier for the offence of shop breaking.

9. I have considered the grounds and submission advanced by the Appellant and I have also considered the reasons set forth by the state in opposition. The offence for which the Appellant was convicted is indeed serious, but I note that the value of the sheep was Kshs. 4500/= and that the sheep was recovered and restored to its owner. Further that the Appellant has been in custody from the 5th October, 2020 when he was apprehended.

10. In the cases of **Katana Ali vs Republic [2016] eKLR** and **Muktar Shogolo vs Republic [2016] eKLR**, the State pointed out therein that the value of the two (2) cows that had been stolen was Kshs 150,000/= with one (1) cow having been recovered. The State contended that in view of the fact that the appellants therein had been imprisoned for more than three (3) years, the court could exercise its discretion to reduce the sentence from ten (10) years to a period this court would deem fit to grant as the sentence that had been meted upon the said appellants was harsh. The court duly obliged and reduced the sentence of the two appellants to five (5) years each.

11. On the premise, I allow the appeal and reduce the sentence of the Appellant to the period so far served. The appellant be and is hereby set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 15TH DAY OF OCTOBER, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of.....Appellant in Person.

In the presence of.....State Counsel.