



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

HIGH COURT CRIMINAL APPEAL NO. E005 OF 2020

KENNETH KIPKOECH ROP.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being a mitigation appeal from the sentence of eleven (11) year imprisonment

by Hon. B. R. KIPYEGON (SRM) IN KERICHO Cr. Case No.2866 of 2018

delivered on 10/9/2018)

J U D G M E N T

1. The Appellant was convicted on his own plea of guilty with the offence of killing an animal with intent to steal contrary to Section 289 of the Penal Code.
2. The Appellant also pleaded guilty to two charges of Creating Disturbance in a manner likely to cause a breach of the peace Contrary to Section 95 (1) (b) of the Penal Code.
3. The particulars of the 1st Count were that on 10/8/2018 at around 16 hours at Singoronik Sub-Location within Kericho County, the Appellant killed a cow with intent to steal its carcass.
4. The particulars of Count 2 and 3 are that on the same material particulars as in Count 1 (above) the Appellant threatened to kill **MARY CHEPNGENO ROP** (Count 2) and **KIPLANGAT HILLARY** (Count 3), while armed with a panga.
5. The facts as given to the court by the prosecuting counsel was that on 10/8/2018 at 4 O'clock, the Complainants were at their home with their son when the Appellant emerged with a panga and threatened them before killing their brown cow by slitting its neck to death. The Complainants screamed and neighbours arrested the Appellant.
6. The Prosecution produced pictures of the carcass with its head severed and the panga as Exhibits.
7. The Appellant apologized in mitigation. He was sentenced to ten (10) years imprisonment on Count 1.
8. The offence of killing an animal with intent to steal contrary to section 289 of the Penal Code provides the punishment to be meted out as follows:

“Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence and is liable to the same punishment as if he had stolen the animal.”
9. The punishment for stealing an animal is prescribed in section 278 of the Penal Code as a maximum of fourteen (14) years imprisonment.
10. The Appellant was also fined Kshs. 5,000/= each on Counts 2 and 3 in default to serve six (6) months imprisonment each.
11. The Appellant has now appealed against sentence on the following grounds;-

(i) That he is the sole bread winner with a young family of three children who depend upon him.

(ii) That his wife is sickly as she suffered a stroke and is paralyzed on the right side of the body and further that his children are no longer attending school.

12. The Appellant is now seeking a non-custodial sentence to enable him take care of his family.

13. I have considered the submissions by the Appellant on mitigation.

14. The plea herein is unequivocal as the same was taken in accordance with the principles set out in the case of **ADEN VS. REPUBLIC**.

15. In **ADAN VS. REPUBLIC [1973] EA 445**, the Court of Appeal laid down in the simplest and plainest terms the manner in which pleas of guilty should be recorded and the steps which should be followed. It is appropriate to set out the holding in full

(i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;

(ii) the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded;

(iii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;

(iv) if the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered;

(v) if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded."

16. I find that the appellant has no right of appeal except on sentence.

17. Section 354 (3) (b) of the Criminal Procedure Code provides as follows on the powers of the Court on an appeal on sentence as follows:-

"In an appeal against sentence, the court may increase or reduce the sentence or alter the nature of the sentence."

18. The principles upon which an appellate Court will act in exercising its discretion to review or alter a sentence imposed by the trial court were settled in the case of **OGOLLA S/O OWOUR VS. REPUBLIC (1954) EACA 270** wherein the Court of Appeal stated that occasion when an Appeal Court can interfere with the sentence meted out by a Trial Court is fairly restricted. It will only interfere if the sentencing court acted upon wrong principles, overlooked some relevant material or if the sentence is manifestly excessive in the circumstances of the case.

19. I have taken into account the appellant's mitigation, however, the contents of the pre - sentence report revealed that the appellant has prior records, that the appellant is a nuisance to his family and the community and the family and local administration are opposed to the appellant being released on a non - custodial sentence.

20. I have noted with concern that the Appellant is not at all remorseful for the offence he committed .All he wants is a non-custodial sentence which is not appropriate in this case.

21. Furthermore, the nature and circumstances of the offence; the appellant threatened the complainants with death before violently killing the only cow owned by the family. I hereby find that the appeal on mitigation is not merited and the same is dismissed.

22. The sentence is accordingly upheld.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 19TH DAY OF NOVEMBER, 2021.

A. N. ONGERI

JUDGE