



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO.13 OF 2019**

**FELIX KIPKOSKEI.....APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**BACKGROUND**

1. The Appellant herein was charged in the lower court with the offence of **Stealing Stock Contrary to Section 278 of the Penal Code**. Particulars are that on the 28<sup>th</sup> day of February 2017 in Ole-Rongai area in Rongai Sub-County within Nakuru County, appellant jointly with others who were before court stole 12(twelve heads of cattle) valued at kshs.40,000 the property of **Mrs. Jemutai Bartogony**.
2. The accused persons were also charged with an alternative count of **handling stolen property contrary to Section 322(1) (2) of the Penal Code**. Particulars are that on the 28<sup>th</sup> day of February 2017 in Ole-Rongai area in Rongai Sub-County within Nakuru County otherwise than in the course of stealing, accused persons dishonestly retained 12 heads of cattle knowing or having reason to believe them to be stolen property unlawfully obtained.
3. The appellant pleaded not guilty to both the main charge and alternative count. The case proceeded for hearing with prosecution calling 6 witnesses. The appellant herein chose to adduce sworn defence with no witness to call. The appellant was convicted jointly with one of the co-accused persons while Accused 3 who the court noted that he orchestrated the whole offence was acquitted for lack of evidence under **Section 215 of the Criminal Procedure Code**. The appellant and accused 1 were sentenced to 7 years' imprisonment. The appellant indicated to the Court that he is satisfied with the conviction and he only wished to pursue appeal on sentence.

**ANALYSIS AND DETERMINATION**

4. I note from the record that the appellant indicated that he was a first offender. In his mitigation before this Court, he said he has learnt a lot in prison; that he has reformed and showed Court certificates of training. He said he has been trained as a painter with Grade 3 and 2 certificates. Also availed to Court recommendation letter from prison; he also said he is a parent and wish to go back to his family and urged the Court to consider that and reduce his sentence.
5. I note that the offender convicted of stealing stock is liable to imprisonment for a period not exceeding 14 years. The appellant was sentenced to half the maximum period of imprisonment. He was sentenced on 23<sup>rd</sup> March, 2018 for 7 years meaning he has been in prison for 2 years now. In my view the sentence imposed was reasonable but in view of the fact that he has taken imprisonment positively and used the period in prison to put value to himself by taking advantage of training available to acquire skills to help him earn a living which is evidence by recommendation letter from prison and certificates filed, it is my considered view that he deserves reduction of sentence.

**6. FINAL ORDERS**

1. Conviction by trial court is upheld.
2. Appeal on sentence is allowed.
3. Sentence is reduced to 5 years' imprisonment.

4. Sentence to run from the time of sentence by the trial court.

**Judgment dated, signed and delivered via zoom at Nakuru This 11<sup>th</sup> day of June, 2020**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Schola - Court Assistant

Appellant in person

Rita

for

State