



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC CRIMINAL APPEAL NO. 7 OF 2018

AMOS KIPKEMOI YEGON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Kericho Chief Magistrate's Court Criminal Case No. 3098 of 2017 (Hon. B. Limo, RM) dated 22nd December 2017)

JUDGMENT

1. The appellant, Amos Kipkemoi Yegon, was the accused in Kericho Criminal Case No. 3098 of 2017. He was convicted on his own plea of guilty to a charge of injuring an animal contrary to section 338 of the Penal Code. The particulars of the offence were that on the 5th day of December 2017 at Kiptome village in Bureti Sub-county within Kericho County, willfully and unlawfully maimed animals capable of being stolen namely three cows valued at Kshs. 100,000, the property of Elizabeth Chebot Terkech. He was sentenced to serve a term of imprisonment of fourteen years.

2. Aggrieved by his conviction and sentence, he has filed the present appeal in which he raises the following grounds of appeal:

1. That I pleaded guilty to the preferred charges.

2. That the learned trial magistrate erred in law and fact when he passed a harsh sentence without warning the Appellant about the consequences of pleading guilty.

3. That the learned trial magistrate's failed to note that the Appellant did not fully understand anything though he pleaded guilty..

4. That the learned trial magistrate erred in law and fact by not giving him a flexible sentence.

3. The brief facts of the case as presented before the trial court were that on 5th December 2017, the complainant, Elizabeth Chebet, locked her cattle boma and went to her home to rest. The appellant, who is her grandson, arrived and demanded to be given a cow to use as dowry. The complainant refused as it appears that she had earlier given the appellant a cow but he had sold it. The appellant was furious and he left the complainant's house swearing he will go and kill the cows in the boma. The complainant retired to bed.

4. At around 3:00 a.m, she heard noises from the cow shed. Upon investigating, she found that the appellant had returned to the boma and started to cut the cows one by one. She raised the alarm and neighbours were awakened, and the appellant disappeared into the darkness to an unknown place. The matter was then reported to Litein Police Station. Police officers visited the scene and found injured and cut animals as evidenced by photos produced in evidence as exhibits 1(a)-(f). The value of the cows was assessed at Kshs. 100,000/= . The cows were slaughtered due to the severity of the injuries they had sustained from the appellant's act. A veterinary report was produced as exhibit 2. These were the facts that the appellant confirmed as true when he pleaded guilty.

5. In his submissions in this court, the appellant argues that despite the fact that he pleaded guilty to the offence, the trial magistrate convicted and sentenced him to serve 14 years imprisonment. He pleaded with the court to consider his submissions and be guided by the decision in **Robert Kipkemoi Tirop Kericho High Court Appeal No. 5 of 2018** in which the High Court reduced the sentence of 14 years to one year imprisonment from the date of the trial court's judgment.

6. In opposing the appeal, the state through Learned Principal Prosecution Counsel Mr. Ayodo submitted that the appeal was without merit. The plea had been taken in a language that the appellant understood, and he had pleaded guilty. The facts had been read to him and the exhibits produced, which included photographs of the animals in question. The appellant had understood the charges he was facing clearly and he pleaded guilty to the said charges.

7. It was Mr. Ayodo's submission further that the trial court also considered the pre-sentencing report by the Probation Office which indicated that the appellant was not remorseful as he had not compensated the complainant and had not shown willingness to do so. He urged the court not to interfere with the findings of the trial court and to dismiss the appeal.

8. This is an appeal on a plea of guilty by the appellant. As such, in accordance with the provisions of section 348 of the Criminal Procedure Code, the appellant can only challenge the sentence imposed.

9. The appellant challenges his conviction and sentence. He argues that the trial court should have warned him about the consequences of pleading guilty. On the law and practice related to the taking and recording of pleas of guilt, the court in **Adan v Republic(1973) EA 445 at 446** stated as follows:

“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilty, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, off course, be recorded.”

10. I have set out above the proceedings before the trial court. The charge was read to the accused in Kiswahili, which he understands. He pleaded guilty. The facts were read to him, and he admitted that they were true. Photographs of the animals he had injured were produced, and he did not dispute that he had injured them. In the circumstances, I am satisfied that his plea was unequivocal, and he fully understood the charge facing him.

11. The appellant, like the appellant in the case of **Robert Kepkemoi Tirop (2018) eKLR** on which he relies, doubtless did not realise the enormity of the sentence that the law imposes on a person convicted on a charge of injuring animals. The maximum sentence is fourteen years, which is what the trial court in this matter passed against the appellant. I note that he too was a first offender, but he was a foolish and arrogant young man who thinks his grandmother owes him a cow for his dowry. He needs to disabuse himself of the notion that anyone owes him livestock for dowry. He must go out there and earn it for himself.

12. Nonetheless, he does not, in my view, merit the sentence of fourteen years imposed on him. He has already spent more than a year in prison. I believe that is a sufficient period to learn the error of his ways. I accordingly reduce the sentence to the time already spent in prison. The appellant shall be released forthwith unless otherwise lawfully held.

Dated and Signed this 31st day of May 2019

MUMBI NGUGI

JUDGE

Dated Delivered and Signed at Kericho this 20th day of June, .2019

GEORGE DULU

JUDGE