REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CRIMINAL APPEAL NO. 7 OF 2019

RICHARD TINEGA SIBOTA.....APPELLANT

VERSUS

THE REPUBLIC.....ACCUSED

{Being an appeal against the Conviction and Sentence of Hon. B. M. Kimtai – SRM Keroka in the original Keroka Principal Magistrate's Court Criminal Case No. 58 of 2019}

JUDGEMENT

The appellant was convicted on two counts of stock theft contrary to Section 278 of the Penal Code on his plea of guilty. He was sentenced to serve five (5) years imprisonment on each count and the sentences were ordered to run consecutively.

Being aggrieved he preferred this appeal. However, at the hearing of the appeal he intimated that he was not challenging the conviction but was only urging this court to reduce the sentence. His submission was that this court should pardon him and set him free as he is a widower and the sole breadwinner of his family.

Mr. Jami Principal Prosecution Counsel conceded the appeal on sentence and submitted that the maximum sentence provided by the law for these offences is fourteen years imprisonment and that the trial court should have taken into account the fact that the stolen animals were found and returned to the complainant and that the appellant had saved the court's time by admitting the offence. Counsel also submitted that the sentences should have been ordered to run concurrently as the offences were committed in the course of the same transaction and on the same date.

It is trite law that the appellate court will not interfere with the discretion of a trial judge in the matter of sentence unless the trial court acted on some wrong principle or the sentence is manifestly excessive – **See Muoki Vs. Republic [1985] KLR 323.** In this case the appellant pleaded guilty to both charges on his first appearance. He therefore saved the trial court the time it would have expended had the charges gone for full trial. The court was also informed that he was a first offender and that the animals the subject of both counts had been found and returned to the owner. It is my finding that had the trial magistrate considered those circumstances he would have imposed a more lenient sentence even taking into account the prevalence of the offence. In **Omuse Vs. Republic [2009] KLR 214** it was held: -

> **"2. The sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and it was thus not proper exercise of discretion in sentencing for the Court to have failed to look at the facts and circumstances of the case in their entirety before settling for any given sentence."**

The trial magistrate did not take so much into consideration when sentencing the appellant to ten (10) years imprisonment.

Moreover, the sentences should have been ordered to run concurrently not consecutively as this is the practice where the offences were committed in the same transaction as in this case. In the case of **Njoka Vs. Republic [2001] 1 KLR 176** the Court of Appeal held: -

> **"7. It lies in the discretion of the court to order whether sentences should run concurrently and consecutively. Nevertheless, where offences are committed in one transaction, as it was in this case, the sentences ought to run concurrently even when laid in separate counts."**

This court is therefore justified in interfering with this sentence and taking into account all the circumstances of this case I shall reduce the sentence on each count to three (3) years imprisonment from the date of conviction and order that the sentences shall run concurrently. It is so ordered.

Signed, dated and delivered at Nyamira this 25th day of July 2019.

E. N. MAINA

JUDGE