



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 24 OF 2018

YEGO ADOMOI.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

(An appeal from the original conviction and sentence of the Principal Magistrate's

Court at Kabarnet Cr. Case No. 531 of 2017 delivered on the 30th day of October, 2017 by Hon. S. Temu, PM)

JUDGMENT

1. The appellant was on **30th October 2017** convicted and sentenced to imprisonment for four (4) years for the offence of stealing stock contrary to section 278 of the Penal Code, the particulars whereof were that he “*on the 16th day of August 2017 at Sereion village Kositei Location within Baringo County stole 4 goats valued at Ksh.24,000/- the property of Pturu Adomoi.*”. He faced an alternative charge of handling stolen property c/s 322 (1) (2) of the Penal Code.

2. The appellant filed written submissions pleading for a reduction of sentence to allow for his immediate release or, alternatively, being placed on non-custodial sentence and urged social cultural justification for his crime as follows:

“I am a first offender in this case, my lords I have never engaged myself in any form of crime since this one emanated due to poverty and joblessness and illiteracy level in my county especially in my home are where there are no industries nor farming activities done [except] livestock rearing which is the only source of income.

Also my lords as it is clearly known in my community and as a culture of our tribe which we inherited from our grandparents that as a male person you should have to look for livestock so that you can marry a girl from a certain family. But having learned that culture goes against the rules of the land and through education people have learned to do away with such practices, my lords I do promise to do away with this particular culture which has taken away my time in prison.

I kindly pray for a second chance to build up the nation though my skills and provide for my family now that I have learned my mistake”

3. At the time of hearing of the appeal on **19th June 2019**, the appellant had only one (1) year to complete his 4 year sentence, with remission.

4. However, the Probation Officer's presentence report, requested by the court in view of the short period remaining on sentence, was negative for non-custodial sentence and the DPP, consequently, urged that the appellant continues with his sentence to completion.

Determination

5. This case affords opportunity for the court to restate a cardinal principle of criminal law set out in section 9 (3) of the Penal Code that-

“(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.”

Therefore, the apparently good motive of the appellant in seeking to acquire goats for use in his dowry payment is immaterial and no excuse for the criminal conduct of stealing his step brother's goats. The law must keep its promise to punish for the offence of theft manifested in the avowedly socio-cultural practice “*to look for livestock so that you can marry.*”

6. However, the private and personal element of the circumstances of this case where the offence is committed by the appellant against his step brother and the modest value of the stolen items (See **Mathai v. R** (1983) KLR 422 and **Ambani v. R** (1990) KLR 161) might have influenced the court to promote Alternative Dispute Resolution (ADR) mechanisms in accordance with Article 159 of the Constitution had there been evidence of likelihood of reconciliation between the appellant and his step-brother complainant whose 4 goats the appellant stole.

7. The Probation's Officer's Report, however, concluded that "*given the negative sentiments from the complainant who happens to be his step brother, the local administration and the immediate neighbors coupled with the fact that the appellant had no fixed abode, ... this case is not eligible for a community based sentence...*" In these circumstances, a non-custodial orders would be futile.

8. I have looked at the sentence of the trial court and I have not seen anything to warrant this court, on the principles of **Wanjema v. R** (1971) EA 493, to interfere with the sentencing discretion of the trial court. As in **Thathi v. R** (1983) KLR 354, a sentencing court is entitled to take into consideration the prevalence of an offence, such as taken by the Principal Magistrate in this case of the incidence of stock theft, when he said,

*"**The offence is common within the area and it must be discouraged.** The offence is a national security challenge and the culprits must be discouraged. The accused is a first offender and I will consider that in the sentence. The accused is thus sentenced to serve 4 years imprisonment."*

Orders

9. Accordingly, for the reasons set out above, the court finds no merit in the appellant's appeal and the same is dismissed.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF JULY 2019.

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent.