

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL APPEAL NO. 13 OF 2018

JOHN NAYEKE ALIAS ABUSAKE.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Principal Magistrate's Court at Eldama Ravine Cr. Case no. 790 of 2017 delivered on the 28th day of February, 2018 by Hon. J.N. Nthuku, SRM]

JUDGMENT

1. Upon consideration of the evidence as required of a first appellate Court (Okeno v. R (1972) EA 32), I find that the accused was properly convicted for the offence of stock theft contrary to section 278 of the Penal Code. The appellant was positively identified by his former employer (Pw2) and Pw2's current employee Pw3 as the person who had brought the stolen animals onto the Pw2's land. The animals were identified by their owner Pw1 upon recovery. Like the trial Court, I reject the appellant defence weighed against the consistent Prosecution evidence.
2. I agree with the DPP that the sentence of imprisonment for 7 years is excessive in view from the value of the animals stolen at Ksh.80,000/= and the fact that the said animals were recovered and restored to their owner Pw1.
3. The appellant was sentenced on 28/2/2018, and has today served 1 year 11 months in prison custody. This period of actual custody is equivalent of a sentence of imprisonment for 2 years 4 months with remission. The appellant had a pre-trial detention of 4 months since arrest on 28/10/2017, which must be taken into account, see section 333 (2) of Criminal Procedure Code.
4. Although the Probation Officer's Report was negative for non-custodial sentence citing principally the complainant's negative sentiments, this Court considers that the period of actual custody of one year 11 months is retributive and deterrent enough, and the applicant has learnt his lesson.

Orders

5. Accordingly, there shall be an Order pursuant to section 354 (3) (b) of the Criminal Procedure Code, while affirming the conviction for stock theft contrary to section 278 of the Penal Code, reduces the sentence to imprisonment for the period already served so that the appellant is released from custody forthwith unless he is otherwise lawfully held.

Order accordingly.

DATED AND DELIVERED THIS 30TH DAY OF SEPTEMBER 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent.