



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MARSABIT**

**CRIMINAL APPEAL NO.10 OF 2019**

**AD.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from a conviction and sentence by Hon. OMBIJA COLLINS Resident Magistrate Marsabit Law Court in Criminal Case No.327 of 2019)*

**JUDGMENT**

The appellant was charged with the offence of stealing stock Contrary to Section 278 of the Penal Code. The particulars of the offence are that the appellant on the 2<sup>nd</sup> day of June 2019 at Shauri Yako area in Marsabit central sub county within Marsabit county jointly stole one she-goat valued at Ksh.5000/= the property of Alkano Abduba.

The appellant pleaded guilty to the charge and was sentenced to serve five (5) years imprisonment. The grounds of appeal are:-

- 1. That the goat belongs to the appellant's parents, was recovered and used during the Iddul-fitr day celebrations.**
- 2. That the sentence is excessive.**
- 3. That the appellant pleaded guilty to the charge.**
- 4. That he is seventeen (17) years old and the trial court did not consider his age.**

Mr. Halake appeared for the appellant. Counsel submit that the only issue is that of sentence. The appellant is remorseful and is seeking leniency of the court. The goat that was stolen belong to his father and the one who complained is the appellant's brother. The family thought that they were disciplining the appellant only for him to be put behind bars for five years. The sentence is excessive and the appellant has learnt a lesson. The goat was recovered.

Mr. Kihara, Prosecution counsel, opposed the appeal. Counsel maintain that the plea was unequivocal. The appellant knew the consequences of pleading guilty. The offence is prevalent and requires a deterrent sentence. The sentence is lawful. The appellant's mitigation was considered.

This is a first appeal and the Court has to re-assess the record of the trial Court and draw its own conclusion. The appellant pleaded guilty and the appeal is not challenging the plea. The charges were read over to the accused and he pleaded guilty. The facts were read over and he once again pleaded guilty.

The facts of the case are that the complainant had tied his goat at his compound for Eid celebrations. The goat was stolen and was traced at the appellant's compound. It was recovered and the matter was reported to the Police.

The trial Court called for a pre-sentencing report but the same was not availed and the Court had to sentence the appellant.

It is clear from the record that the appellant is remorseful. He pleaded with the trial Court for forgiveness. He contends that he is 17 years old. During the hearing of the appeal his father was in Court. I do find that this a family issue. Had the pre-sentencing report been made available to the court it would have revealed the fact that the matter involved a family.

The goat was stolen on 2<sup>nd</sup> June, 2019. The appellant was arrested on the same day and took his plea the following day 3<sup>rd</sup> June, 2019. He was sentenced on 18<sup>th</sup> June, 2019. He has been in custody from 3<sup>rd</sup> June to date, a period of about four (4) months.

Given the facts of the case, I do find that the five years imprisonment is excessive. The goat was duly recovered and the matter involves a family. The record shows that the goat was produced in Court and was thereafter released to the complainant.

I do find that the four (4) months the appellant has spent in custody is sufficient punishment. The five (5) years imprisonment is hereby set aside and is replaced by the period already served. The appeal on conviction is disallowed. However, the five years sentence is replaced by the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT MARSABIT THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2019**

**S. CHITEMBWE**

**JUDGE**