



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HIGH COURT CRIMINAL MISC. APPLICATION NO. 2 OF 2019

JAMES MUTUKU MBAMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with the offence of stealing stock contrary to Section 278 of the Penal Code. The particulars are that the Applicant and another on the night of 31st March 2012 and 1st April, 2012 at Syokivulu village in Kikumbulyu location of Makueni county jointly stole three (3) heads of cattle all valued at Kshs.80,000/=, the property of **John Mulonza**.
2. He denied the charge and the case proceeded to full trial. Thereafter, he was found guilty and convicted on 25th February, 2016. He was sentenced on 10th March, 2016 to serve seven (7) years imprisonment.
3. In his application, the Applicant seeks to have the sentence of seven (7) years imprisonment reviewed, and the sentence served be considered sufficient punishment. He said he is due for release on 10th November, 2020. The Applicant submitted on having a family.
4. The application is opposed by the Respondent, with Mrs. Owenga submitting that the Applicant's mitigation was taken into account by the trial court before sentence. That with remission considered, he should soon be released.
5. In his mitigation before the trial court, the Applicant said he has children and a wife. That he has no father and takes care of his family and siblings.
6. Section 278 of the Penal Code provides:

Stealing stock

“If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat, or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”

7. The maximum sentence for this offence is fourteen (14) years imprisonment. The trial court gave the Applicant seven (7) years imprisonment after noting that he had dependants.
8. The evidence on record gives a clear picture of how the animals were carefully untied from the cowshed of the owner John Mulonza (Pw1). This was done at night.
9. It is also key to note that all the three heads of cattle were recovered on 2nd April 2012 from the Applicant and his co-accused. This recovery was one of the factors which ought to have been considered, during sentencing. The record is silent on that.
10. The Applicant had been on bond during the hearing. He has served his sentence since 10th March 2016 which is exactly three (3) years and seven (7) months. Considering that he did not benefit at all from his wicked acts and Pw1 recovered all his cows, I find the period of 3 years and 7 months served to be sufficient punishment for him. Am sure he has re-examined himself and his actions while in prison and found that his actions did not benefit anyone let alone himself.
11. I therefore allow the application, set aside the sentence of seven (7) years' imprisonment and substitute it with the period already served.

12. The Applicant to be released forthwith unless otherwise lawfully held under a separate warrant.

Orders accordingly.

Delivered, signed and dated this 23rd day of October, 2019 in open court at Makueni.

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H. I Ong'udi

Judge