

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 179 OF 2017

RICHARD KIMYUGU KAWERTOI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The appellant who was on 30/1/2015 convicted of stealing stock contrary to section 278 of the Penal Code and sentenced to imprisonment for 5 years, appeals from the sentence without challenging the conviction.
2. At the time of hearing, the appellant had already served (2) years and 10 months and he sought that his sentence be reduced pointing out that he had the benefit of revision. The court noted that his sentence was passed during the one year gap between 2014 – 2015 when the provision for remission under section 46 of the Provisions Act had been removed by repeal only to be reinstated by the Statute Law (Misc. Amendment) Act 2015.
3. The DPP did not oppose the appeal on the sentence and Ms Macharia Assistant DPP considered that the time served by the appellant was sufficient punishment for the offence but suggested that the appellant may be punished by a non-custodial sentence for the remaining term.
4. The pre-sentence Probation Officer's Report was not positive for non-custodial sentence observing that the appellant had no fixed abode as he kept "changing residence among relatives in various areas within East Pokot Sub-county."

Orders

5. Having considered the offence of stealing (3) camels valued at Ksh. 142,000/- and the fact that the appellant has served close to (3) years imprisonment (by 30/1/2018), I would agree with the DPP that the appellant has been sufficiently punished for the offence of stealing stock contrary to section 278 of the Penal Code.
6. Accordingly, I find the sentence of imprisonment for (5) years to be excessive and reduce the same pursuant to section 354 (3) (b) of the Criminal Procedure Code to such period as will enable the appellant to be released from custody immediately.

DATED AND DELIVERED THIS 16TH DAY OF JANUARY, 2018

EDWARD M. MURIITHI

JUDGE

Appearances: -

Appellant in person

Ms Macharia Assistant DPP