

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 202 OF 2017

KOMEN LORUKO ALIAS MUSA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Being an appeal from the original conviction and sentence in Kabarnet Principal Magistrate's Court Criminal Case No. 1008/2016 made on 15th December, 2016 by Hon. E. M. Ayuka, RM]

JUDGMENT

1. In his written submissions dated 15/3/18, the appellant only seeks reduction of his sentence of imprisonment for 3 years for the offence of stealing stock contrary to section 278 of the Penal Code imposed on 15/12/16. He seeks leniency on the ground that he was a first offender and that his act emanated from alcohol.

2. The DPP's Ms. Macharia did not oppose the appeal pointing out that:

“The appellant pleaded guilty and therefore the appeal is on sentence. He was sentenced to imprisonment for 3 years for stealing stock contrary to section 278 of the Penal Code [and that] being in custody for 1 year 4 months. He had stolen 1 sheep and I believe that the time he has served is adequate punishment, and the sentence may be reduced to the time served.”

3. With remission, the appellant would have been released on 15/12/18 after serving full sentence. I would agree that having regard to the value of the item stolen given as one ram valued at 4,500/=, a sentence of two years would have been sufficient punishment. With remission of $\frac{1}{3}$ the term under section 46 of the Prisons Act, the appellant would serve 16 months, which is less than the period he has been in custody today, standing at 1 year, 4 months and 5 days.

4. I would agree with the DPP that the appellant has been sufficiently punished for this offence.

Orders

5. Accordingly, for the reasons set out above, the court sets aside the imprisonment term for 3 years imposed by the trial court and, pursuant to section 354 (3) (b) of the Criminal Procedure Code, reduces the sentence of imprisonment to the time already served so as to enable the appellant to be released from custody immediately, unless he is otherwise lawfully held.

DATED AND DELIVERED ON THIS 20TH DAY OF APRIL, 2018.

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Ass. DPP for Respondent.