



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPENGURIA

CRIMINAL DIVISION

CRIMINAL APPEAL NUMBER 4 OF 2018

BETWEEN

VICTOR WANJALA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against from the conviction and sentence on

Kapenguria Magistrate's Court Criminal Case number 387 of 2018

dated 23/3/2018)

CORAM: LADY JUSTICE RUTH N. SITATI

JUDGMENT

Introduction

1. Victor Wanjala pleaded guilty to a charge of ***stealing stock contrary to section 278 of the Penal Code***. The particulars of the offence are that on the 16th day of March, 2018 at Lityei Village within West Pokot County, the appellant stole one sheep valued at Kshs.3,000/-, the property of Richard Mwareng.

2. Upon conviction, the appellant was sentenced to serve 3 years imprisonment.

The Appeal

3. Though he had pleaded guilty to the charge, the appellant felt aggrieved by the sentence imposed upon him by the learned trial magistrate, Mr. Vincent O. Adet. The appellant filed appeal on the following summarized grounds:-

- 1. That the appellant is a first offender.**
- 2. That the appellant is remorseful and has accordingly realized the folly of his actions.**
- 3. That the sentence is too harsh in the circumstances.**
- 4. That the appellant undertakes not to repeat such an offence.**

4. It is the appellant's prayer that the appeal be allowed, and the sentence reduced or the court may deal with the issue of sentence as it deems fit.

The Facts of the Case

5. From the record, the facts of the case against the appellant are as follows: On 16th March, 2018 at about 8.00am, the complainant Richard Mwereng took his flock of sheep to his paddock situated at Lityei Village, tied them and left them grazing as he went to do other duties. When he returned, he realized that one of the sheep was missing.

6. The complainant informed his neighbours about the missing sheep, and since it was a Friday, he rushed to Kishaunet Market where he suspected his sheep might have been taken for sale. On arrival at the market, the complainant was informed that this sheep had been sold to some traders from Kitale. He rushed to Kitale and confirmed the information. The people who had bought the sheep offered to identify the young man who had sold the sheep to them. The sheep had already been slaughtered.

7. The people who had brought the sheep accompanied the complainant to Makutano and before long the appellant was identified to the complainant. The appellant was arrested, taken to the police and charged with the offence.

The plea and Sentence

8. When the above facts were read and explained to the accused in Kiswahili, he replied, “**The facts are correct.**” He was then convicted on his own plea. The court was then informed that the appellant was a first offender. In mitigation, he asked to be forgiven as he had not been paid. He was sentenced to three years imprisonment.

Issues for Determination

9. I have established from the record that the plea taken by the trial court was unequivocal. The appellant himself also has no problem with the conviction. All he wants is for this court to alter the sentence downwards so that it is reduced to the period already served or even consider giving him a non-custodial sentence. The question that arises for determination is whether the appellant has made out a case for the relief sought.

Analysis and Determination

10. An appellate court can only interfere with the sentence imposed by a Trial Court if such sentence is excessive in the circumstances or if it is illegal or if it is too low. Under **section 354(3) of the Criminal Procedure Code**, this court has jurisdiction to impose an appropriate sentence on appeal, including enhancing the sentence imposed by the magistrate’s court.

The Submissions

11. The appellant filed and wholly relied on his written submissions dated 20th June, 2018. The written submissions were a replica of the grounds in the petition of appeal. The appellant states that he has learnt his lesson the hard way and that once he is out of prison, he will be a law abiding citizen set to preach peace to the community.

12. Prosecution counsel, Miss Kiptoo opposed the appeal, contending that having pleaded guilty to the charge of stealing stock and being sentenced to only 3 years imprisonment, the appellant should have no reason to complain as the offence carries a maximum sentence of 14 years. Secondly, counsel submitted that since the appellant was convicted on his own plea, appeal should be confined to only the extent or legality of the sentence.

Determination

13. This appeal is against sentence only and in this regard, **section 348 of the CPC** applies. The section provides as follows:-

“348. No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”

14. Having gone through the record, I am satisfied that the plea of guilty entered by the learned trial magistrate was unequivocal. As for the sentence, the minimum sentence upon conviction of the offence of stealing stock is seven years while the maximum sentence is fourteen years. What this means is that the sentence imposed by the learned trial magistrate was an illegal sentence. In the circumstances, I set aside the sentence of three years imprisonment and in lieu therefore, I sentence the appellant to seven (7) years imprisonment from the date of original sentence.

Conclusion

15. Other than the variation of the sentence, the **appellant’s appeal be and is hereby dismissed.**

It is so ordered.

Judgment delivered, dated and signed in open court at Kapenguria on this 31st day of July, 2018

RUTH N. SITATI

JUDGE

In the Presence of

Present in person - Appellant

Miss Kiptoo present for Respondent

Juma Barasa - Court Assistant

R. SITATI

JUDGE

31.7.2018