

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 42 OF 2016

MAXWEL NYANG'AU MOKAYAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. R.B.N Maloba – SRM dated 16th March, 2015 at the Chief Magistrate's Court at Kisii in Criminal Case No. 512 of 2015)

JUDGMENT

1. The appellant, MAXWELL NYANG'AU MOKAYA, faced a charge of stealing stock contrary to section 278 of the Penal Code (Chapter 63 of the Laws of Kenya). It was alleged that on 15th February 2015 at Igemo Sub location, Marani Sub-County of Kisii County, he stole one cow valued at Kshs. 25,000/= the property of MONICAH MOKE MAKORI.
2. The appellant pleaded guilty and was sentenced to five (5) years imprisonment. He now appeals against the sentence only.
3. In order to interfere with the trial court's discretion to impose a sentence, the appellate court must be satisfied that the trial court failed to consider relevant facts or took into account irrelevant facts or erred in application of principle. It may also intervene where, considering all the circumstances, the sentence was harsh or excessive.
4. In imposing the sentence, the trial magistrate called for a probation report which showed that the appellant had criminal antecedents and had been jailed for three (3) years in 2012 for stealing. The appellant's family expressed fear that if he was released he would be attacked because of his criminal past. The appellant confirmed that he had been jailed for three years for stealing.
5. Considering the facts that were before the trial court, I cannot say that the trial magistrate erred in finding that a harsher sentence was warranted given that the appellant was a repeat offender. The sentence is affirmed.
6. The appeal is dismissed.

Dated and delivered at Kisii this 23rd day of July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.