



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR MISC. APPL NO. 263 OF 2017

(Formerly Makindu PMCRC No. 410 of 2016)

JAMES WAMBUA KIVUVA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

INTRODUCTION

1. The Applicant with another not before this court was charged in Lower Court with offence of:- **COUNT I: STOCK THEFT CONTRARY TO SECTION 278 OF THE PENAL CODE.**
2. Particulars being that on the night of 27th and 28th day of March 2016, at Kalamba village in Nzau Sub-County within Makueni County, James Wambua Kivuva stole one he goat valued at Kshs.3,000/= the property of Jackson Kivuva Kimuya.
3. **COUNT II: STOCK THEFT CONTRARY TO SECTION 278 OF THE PENAL CODE.**
4. Particulars being that on the night of 30th and 31st March, 2016 at Kalamba village in Nzau Sub-county within Makueni County, James Wambua Kivuva and Benjamin Mutunga Masila jointly stole one she goat valued at Kshs.5,500/= the property of Jackson Kivuva Kimuya.
5. **COUNT III: STEALING CONTRARY TO SECTION 275 OF THE PENAL CODE.**
6. Particulars being that on the 30th day of March 2016, at Kalamba village in Nzau sub-county within Makueni County, James Wambua Kivuva and Benjamin Mutunga Masila jointly stole 45 kilograms of maize grain and one chicken all valued at Kshs.2,000/= the property of Francisca Munini Sammy.
7. On 04/04/2016, he appeared in court and he pleaded guilty to the charge.
8. The facts were read to him and he stated that they were true.
9. When given chance to mitigate, he said that he asked his father to forgive him.
10. On sentence, the court awarded Applicant:-
Count I: Two years imprisonment.
Count II: Two years imprisonment.
Count III: Six months imprisonment.
11. The same were to run consecutively. This was on 04/04/2016.
12. On 30/10/2017, after a period of about one year and a half, the Applicant lodged instant application to lodge petition of mitigation out of time.

13. Of course the mitigation was done in Trial Court after conviction, before sentence. The court had assumed that he seeks to lodge appeal out of time.
14. Section 341 Criminal Procedure Code stipulates that an appeal in criminal case shall be lodged within 14 days save for exceptional reasons.
15. The only reason given by Applicant for delay aforesaid is that he has now reconciled with his father (complainant) and he is ready and willing to settle matter out of court.
16. The aforesaid reason is not an excuse for the delay. The court has not found any legal ground explaining the reason for delay in lodging appeal within time as stipulated by the law.
17. Thus court finds no merit in the application and dismisses the same accordingly.

DATED DELIVERED AND SIGNED THIS 30TH DAY OF OCTOBER, 2018 IN OPEN COURT.

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C. KARIUKI

JUDGE