



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 34 OF 2015

[FORMERLY CRIMINAL APPEAL NO. 31 OF 2015]

LORIDI KASERTI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Appeal from the original conviction in Criminal Case No. 818 of 2014 in the Resident Magistrate's Court at Kabarnet by E. Kigen, Resident Magistrate, dated 13th February 2015]

JUDGMENT

1. The appellant was adjudged guilty of *stealing stock* contrary to section 278 of the Penal Code. He was sentenced to *four years* imprisonment.
2. The particulars were that on 20th September 2014 at Chelelyo village, Baringo North District within Baringo County, jointly with others not before the court, he stole one sheep valued at Kshs 3,500; the property of John Chelelwa.
3. The petition of appeal is on *sentence* only. The petition of appeal was filed on 11th March 2015. It pleads *four* grounds: that the appellant lost his father in a crocodile attack near Lake Baringo; and, his mother depends on him. Secondly, that he is remorseful for his actions. Thirdly, that he is prepared to retribute; and, fourthly, that he is a first offender.
4. At the hearing of the appeal, the appellant pleaded for mercy. For the avoidance of doubt, he confirmed that he is *not* challenging his conviction. In a synopsis, the entire appeal is a plea for *clemency*.
5. The appeal is contested by the Republic. The case for the State is that the sentence was well within the law. I was implored to dismiss the appeal.
6. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
7. The complainant's sheep went missing on 20th September 2014. He reported the matter to the police. He, his shepherd (PW2), P.C. Murigi (PW5) and members of the public followed some foot prints. They led them to the house of the appellant. It was at about 2:00 p.m. They found the appellant inside the house with two other people. They were cooking meat from the stolen sheep. One of them escaped. The appellant and his accomplice were arrested. The appellant showed the police where he had hidden the skin and part of the carcass. The complainant identified his slaughtered sheep. Photographs of the skin and head of the sheep were taken and exhibited in court.
8. From the evidence of the prosecution witnesses, I am satisfied that the appellant and his co-accused were positively identified. They were caught preparing the mutton soon after the theft. I concur with the learned trial magistrate that their defence was bogus. I am satisfied that the conviction was safe. As I have stated, the appellant *no* longer challenges his conviction.
9. I will now turn to the sentence. Section 354 (3) of Criminal Procedure Code provides that at the hearing of an appeal-

“The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may.....(ii) alter the finding, maintain the sentence, or with or without altering the finding reduce or increase the sentence; or..... ”
10. In *Macharia v Republic* [2003] 2 E.A 559 the Court of Appeal had this to say on sentencing-

“The Court would not alter a sentence on the mere ground that if the members of the court had been trying the appellant they might have passed a somewhat different sentence and it would not ordinarily interfere with that discretion exercised by a trial judge, unless it was evident that the judge acted upon some wrong principles or overlooked some material factors. ...The sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and it was thus not proper exercise of discretion in sentencing for the Court to have failed to look at the facts and circumstances of the case in their entirety before settling for any given sentence.”

11. The learned trial Magistrate called for a *probation report*. The appellant was then aged 22 years and a *first offender*. But the court found that the offence was *prevalent* in the area; and, that a *deterrent* sentence was appropriate. The plea for mercy before this court must be looked at through those lenses. In *mitigation*, the appellant told the trial court that his father was deceased; and, that his mother depended on him. He pleaded for leniency. In short, the appellant has *not* told the High Court anything *new*.

12. I cannot then say that the learned trial Magistrate *acted upon some wrong principles or overlooked some material factors*. Despite the fresh clamour for leniency, I remain alive that stock theft is a *serious* offence against *property*. The value of the sheep was Kshs 3,500. Section 278 of the Penal Code provides for a sentence of up to *fourteen* years.

13. This court will *not* alter a sentence on the mere ground that it might have passed a somewhat *different* sentence. See *Macharia v Republic* [2003] 2 E.A 559. Considering the *gravity* of the offence, the sentence of *four years* was quite *lenient*. I thus refuse to disturb the sentence.

14. The upshot is that the appeal is devoid of merit. It is *dismissed*.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 26th day of January 2017

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

Appellant.

Ms. B. Oduor for the Republic.

Mr. J. Kemboi, Court Clerk.