



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO.94 OF 2016

BALISIO LEKWALE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 667 of 2014 of the Chief Magistrate's Court at Isiolo by Hon. J.M Irura –Ag. Principal Magistrate)

JUDGMENT

The appellant, **BALISIO LEKWALE**, was convicted for the offence of stealing stock contrary to section 268 as read with section 278 of the Penal Code.

The particulars of the offence were that on 25th September 2013, at Leparua area of Isiolo county, jointly with others not before court, stole thirteen goats valued at KShs. 91,000/= the property of **ISAAC MOHAMED**.

The appellant was sentenced to serve seven years imprisonment. He now appeals against both conviction and sentence.

The appellant was in person. He raised three grounds of appeal as follows:

1. That the learned trial magistrate erred in law and in fact by failing to appreciate an existing grudge with KWS officer.
2. That the learned trial magistrate erred in law and in fact by convicting the appellant without sufficient evidence.
3. That the learned trial magistrate erred in law and in fact by failing to consider his defence.

The state opposed the appeal through Mr. Namiti, the learned counsel.

The facts of the prosecution case briefly were as follows:

After the complainant had realized that some of the goats he was grazing were missing, he raised an alarm and he was assisted in tracking them. Some were recovered in the home of the appellant while the appellant led them to where three hides of his other goats were recovered.

The appellant denied any involvement in the offence.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC [1972 EA] 32**.

The issue of an existing grudge with a Mr. Julius Cheruiyot of KWS did not feature anywhere in the proceedings. This is clearly an afterthought.

The evidence on record indicate that after the complainant's goats were stolen, they were tracked to the manyatta of the appellant. The appellant later led the tracking team to a slaughter house where the skins of three of the goats that had already been slaughtered were recovered. This is what PW1, PW2 and PW4 testified to. I therefore find that there was ample evidence on record to convict the appellant.

Though the appellant contended that the learned trial magistrate did not consider his defence, my perusal of the judgment shows that she indeed considered the same before dismissing it.

From the foregoing analysis of the evidence on record, I make a finding that the appeal lacks merit. The same is dismissed.

The sentence of seven years cannot be termed as harsh in the circumstances of this case. Appeal on sentence is likewise dismissed.

DATED at MERU this 27th day of **April, 2017**

KIARIE WAWERU KIARIE

JUDGE