

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 34 OF 2016

KENNEDY NYONGESA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in criminal case No. 2533 of 2015 of the Chief Magistrate's Court at Busia by H.N Ndung'u (miss)– Chief Magistrate)

JUDGMENT

The appellant, **KENNEDY NYONGESA**, was charged with an offence of stealing stock contrary to section 278 of the Penal Code.

The particulars of the offence were that on 10th November 2015 at Madende village, Mungatsi sub location of Busia County, he stole one cow valued at Kshs. 20 000/= the property of **JOSEPH OKONGO**.

He pleaded guilty to the offence. He was convicted and sentenced to three years imprisonment.

He now appeals against the sentence.

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

The facts of the prosecution case were briefly as follows:

The complainant is the father of the appellant. When he woke up on 10th November 2015, he found one of his cows missing. He reported and a search ensued. The cow was recovered where the appellant had sold it. He was arrested and charged.

Section 278 of the Penal Code provides as follows:

If the thing stolen is any of the following things, that is to say, a horse, mare,

gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.

The appellant was sentenced to serve three years imprisonment. Prior to the sentence, the learned trial magistrate called for a pre-sentence report. The report was not favourable to the appellant. His community and family were very negative about him. The learned trial magistrate had considered him for a non custodial sentence but for his standing with his family and community.

The sentence that was meted out cannot be said to be harsh or excessive in the circumstances. I will not disturb the same. The appeal is accordingly dismissed.

DELIVERED and SIGNED at BUSIA this 22nd day of June, 2017

KIARIE WAWERU KIARIE

JUDGE