



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE APPEAL NO. 100 OF 2016

LTALAKWA LESONDONKERA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. C N Ndegwa Principal Magistrate dated 16th March 2016 in Maralal Principal Magistrate Court Criminal Case No. 790 of 2015)

JUDGMENT

1. The appellant **LTALAKWA LESONDONKERA** was charged and convicted of the **offence of stealing Stock Contrary to Section 278 of the Penal Code** before the Principal Magistrate's Court at Maralal. On being convicted the trial court sentenced him to 7 years imprisonment. Being aggrieved of that sentence the appellant has filed this appeal against that sentence.

2. In his submissions the appellant has presented mitigation. He submitted that this court do consider his imprisonment, now of one year and three month, as sufficient for the offence bearing in mind that he has challenges with his health, allegedly he is suffering from TB although under treatment; and that because he is now reformed, religious and having a skill.

3. The Learned Principal Prosecuting Counsel Mr Tanui opposed the appeal on the basis that the sentence was lenient. That the trial court in sentencing was informed that appellant was a first time offender and that the offence of stock theft was prevalent in that area.

4. Sentencing is always the discretion of the trial court. That discretion can only be interfered with if the sentence is manifestly excessive in the circumstances of the case; if the trial court over looked material factor; if the trial court took into account some wrong material, or if the trial court acted on the wrong principles: see **SUSAN ASIYO – V- REPUBLIC [2016] eKLR**

5. In the case **REGINA – V – MA [2004] 145 A** the principles of sentencing were set out as follows:

- i. To ensure that the offender is adequately punished;***
- ii. To prevent crime by deterring the offender and other persons from committing similar offences;***
- iii. To protect the community from the offender;***
- iv. To promote the rehabilitation of the offender;***

v. To make the offender accountable for his or her actions;

vi. To denounce the conduct of the offender

vii. To recognise the harm done to the victim of the crime and the community.

6. Bearing the above Principles in mind I do consider the sentence of the appellant who was a first offender, of 7 years imprisonment to be excessive. 7 years imprisonment is half the sentence of the maximum set out in **Section 278 of the Penal Code**. If a first offender is sentenced to half of the maximum sentence what if he offends three or four times more. The sentencing court would sooner than later reach the maximum sentence. For a first offender the sentence ought to have at least been a quarter of the maximum sentence. Such a sentence would in my view ensure the offender is adequately punished and it would act as a deterrent. It is for the above reason I make a finding that there is basis of interfering with the trial court's sentence.

7. For the above reason the trial court's sentence is hereby set aside.

LTALAKWALESONKERA is hereby sentenced to two years imprisonment which sentence shall start from the date he was convicted and sentenced by the Court.

Dated and Delivered at Nanyuki this 23rd OCTOBER 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: LtalakwaLesodonkera

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE