



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO. 115 OF 2016

DERIS LEKARTIWA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. E. Bett

Senior Resident Magistrate dated 26th August 2016 at Nanyuki

Chief Magistrate Court Criminal Case No. 1162 of 2015)

JUDGMENT

1. **DERISLEKATIWA** (the appellant) herein was convicted after trial of the **offence of stealing stock contrary to section 278 of penal code**. He was sentenced by the trial court to serve to five years imprisonment. He has filed his appeal against that sentence.

2. The appellant has presented three grounds to support his appeal:-

- ***“The first is that at the time of conviction he was a first time offender;***
- ***The second is that he is youthful and can be productive to the society;***
- ***The third ground is he is now remorseful and reformed.”***

3. The facts of the case is that the complainant Jackson Parasian was on 13th October, 2015 on safari away from his home. While on away he was informed that his 12 goat had gone missing. He contacted his neighbour to assist him find the goats. On that same day at 7.00 pm Eiko Lechodo an uncle of appellant saw the appellant driving away 12 goats. Lechodo tried to prevent the appellant from driving those goats which he recognised as belonging to his community and not to the Somali community as alleged by the appellant. The appellant responded to that attempt to stop him. The uncle however brought the goats back which the complainant later confirmed were his.

4. **Section 278 of the penal code** provides a sentence of not more than 14 years for a conviction for stealing stock. The trial court sentenced the appellant to five years imprisonment. The principles upon which the appellate court will not interfere with the trial court sentence which were discussed by the Justice F. Tuiyot in the case of: **Susan Asiyu V Republic [2016] eKLR** where he stated: _

“This is an appeal against sentence only. The principles upon which the appellate Court can interfere with the sentence of an Appeal Court are settled. They are:

- i. If sentence is manifestly excessive in the circumstances of the case, or***
- ii. If the Trial Court overlooked some material factor, or***
- iii. Took into account, some wrong material, or***
- iv. Acted on a wrong Principle (see Bernard Kimani Gacheru Vs. Republic [2002] eKLR***

5. In view of the trial court sentence which was not harsh or excessive and by which the trial court did not overlook any factor or take any factor in consideration in error this court cannot interfere with that sentence. This court’s view is that the appellant’s appeal has no merit in this court view the appellant was given a custodial sentence for having stolen 12 goats of the complainant. ***In the case Regina V MA (2004) 145A.*** The purpose of the punishment of the offender was stated 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 recognize the harm done to the victim of the crime and the community.***

All those above principles are relevant in the case of the appellant.

6. The appellants appeal against sentence has no merit and is dismissed. The trial court sentence is hereby confirmed.

Dated and Delivered at Nanyuki this 29th November, 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Deris Lekartiwa

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE