



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**HCCR NO. 142 OF 2017**

**(ORIGINAL CONVICTED NO. 390 OF 2015 KABARNET)**

**KOKON TAPAPUS ALIAS LOTORI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***[Appeal from original conviction and sentence***

***in Kabarnet Criminal Case No. 390 of 2015]***

**JUDGMENT**

1. The appellant was convicted and sentenced to imprisonment for (4) years for the offence of stealing stock contrary to section 278 of the Penal Code, the particulars of which were that on the 19<sup>th</sup> day of June, 2015 at Kiboit Village Baringo North Sub-county, within Baringo County stole one she-goat valued at Ksh. 3000/- the property of Nicholas Kimtai Namoo.

2. In finding the appellant guilty as charged, the trial court held:-

***“There was no doubt that the slaughtered goat belonged to the complainant as he was able to identify it by its marks nor did the accused lay any claims on it.***

***I am thus satisfied that the prosecution had proved the case beyond reasonable doubt that it was the accused that stole the complainant’s goat which he slaughtered and he was found at the scene cutting and preparing to carry it away using the plastic container that was produced as an exhibit”.***

3. On appeal against sentence seeking a non-custodial sentence by Petition of Appeal dated 4/4/2017, the appellant told the court that he was remorseful [and the court made a minute on the record observing that the “appellant appears remorseful”] and pleaded that he had (2) children in secondary school and that he had lost his livestock on account by his incarceration, having been in custody for over (2) years since 19/6/2015.

4. DPP opposed the appeal against sentence which, it was submitted, was lenient in view of the maximum sentence of 14 years imprisonment prescribed for theft of stock, and submitted further that the appellant had been caught red-handed slaughtering the goat identified as belonging to the complainant.

5. A Probation Officer's report dated 28/11/2017 recorded that:-

***“Despite his expression of remorse on plea for leniency, the inmate never mentioned a fixed abode. The stock theft menace has been a security challenge and in particular to economic deprivation on many livestock farmers. It is recommended that the inmate serves his sentence as means of deterrence”***

6. On reflection, DPP considered that the appellant had served over 2 years of his (4) years sentence and submitted that they did not object to the remaining period being non-custodial.

7. The court is enjoined in assessing the sentence to consider the value of the thing stolen and to the moral blameworthiness of the offender. *See Ambani v. R* [1990] KLR 161 and *Omuse v. R* [2009] KLR 214.

8. I consider that the theft of one goat does not have the ramifications on the security and economic development of the county as suggested by the Probation Officer's Report as a fully fledged livestock rustling would have. I consider the Probation Officer's view as an exaggeration of the circumstances of the case where the appellant stole a goat and slaughtered it for personal benefit. The small magnitude of the offence must be taken into account in assessing the suitable punishment in accordance with case law.

9. I would agree that a sentence of (4) years imprisonment is excessive punishment for the offence of theft of one goat valued at Ksh. 3000/-. However, I agree that the offence is rampant and ought to be discouraged by appropriate sentence.

### **Conclusion**

10. Having already served 2 ½ years in custody since 19/6/2015 when he was arrested, I would agree with the DPP that a non custodial sentence may be considered for the accused. In order to remove the benefit of crime anticipated by the appellant by his act of theft of the goat, the court will impose a fine of Ksh. 3000/- the very value of the goat, in default of which the appellant will serve (3) months imprisonment.

11. Section 26(3) of the Penal Code is the authority for the nature of sentence herein imposed, providing as it does that –

***“A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitute for imprisonment.***

12. Section 278 of the Penal Code under which the appellant was charged provides for imprisonment for a period not exceeding fourteen years.

### **Orders**

13. Accordingly, for the reasons set out above, in exercise of the powers of the court under section 354(3) (b), of the Criminal Procedure Code (CPC), I alter the nature of the sentence to both an imprisonment for two years and half and a fine Ksh. 3000/- in default three (3) months imprisonment.

14. For avoidance of doubt the sentence of imprisonment for (2½) years herein shall be computed from the date of arrest on 19/6/2015 in accordance with section 333(2) Proviso of CPC and the accused has therefore served this part of the sentence in full.

15. Consequently, the accused shall be released from custody upon payment of the fine of Ksh. 3000/- imposed under paragraph 13 (above).

**DATED AND DELIVERED ON 19<sup>TH</sup> DAY OF DECEMBER 2017.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances: -**

Appellant in person

Ms. Macharia, Ass. Director of Public Prosecutions.