



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MAKUENI**  
**CRIMINAL APPEAL NO. 133 OF 2017**  
**DANIEL SAMPERU NTOMPO.....APPELLANT**  
**-VERSUS-**  
**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

**INTRODUCTION**

1. The appellant was tried and convicted by Hon. P. Wambugu (SRM), Kilungu Law Courts, for the offence of stealing stock contrary to Section 278 of the Penal Code. He was sentenced to 7 years imprisonment.
2. Being dissatisfied with the same judgment, the appellant filed a petition of appeal on 24<sup>th</sup> May 2015 and listed the following as his grounds;
  - i. ***That*** I pleaded not guilty to the charge.
  - ii. ***That*** I am a poor man and have no money for appeal fee.
3. Through an undated document titled 'Notice of Mitigation' and supported by a sworn affidavit, the appellant stated that he wished to withdraw his appeal and substitute it with a petition for mitigation.
4. The second paragraph of his document was worded as follows;

***“that I am not in dispute of the conviction and sentence but only plead with the Hon. Court under the powers conferred to it in Article 165(7) of the Constitution of Kenya 2010 to review the sentence hence substitute the same with either Community Service Order (C.S.O) or any other better terms since the one that was imposed by the trial Court was harsh and excessive.”***

**ANNALYSIS**

5. It is apparent that the appellant is no longer disputing the facts of the case in the trial Court. He is basically seeking a reduction of the sentence. In my view, there is no need for this Court to analyze the evidence that was adduced during trial as it will add no value.
6. The question to be answered is whether or not the appellant has advanced good grounds to persuade this Court to interfere with the aforesaid sentence which according to him was harsh in the circumstances of the case.

7. **268 (1)** of the Penal Code defines stealing as follows;

***“A person who fraudulently and without claim of right takes anything capable of being stolen or fraudulently converts to the use of any person other than the general or special owner is said to steal that thing or property”.***

8. With regard to stock, **Section 278** of the penal code provides,

***“If the thing stolen is any of the following things that is to say a horse, mares, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe whether goat or pig or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”***

9. From the plain reading of section 278, the maximum sentence for stealing stock is 14 years. Therefore, the sentence of 7 years imposed by the trial Court is legal.

10. Before the sentence was passed by the trial Court, the appellant said the following in mitigation;

***“I am an orphan. I have been helping in taking care of our siblings. I ask the Court to be lenient on me so that I can go home and help them. This is my first offence”.***

11. The learned trial Magistrate then recorded the following;

***“Sentiments of both accused are noted. Also, the sentiments of the prosecutor are noted. The Court finds that this is a very serious offence that is quite prevalent in the area. Section 278 of the Penal Code provides for a period of maximum 14 years imprisonment. Accused are first offenders.***

***They are remorseful. However, doing the best I can, I do sentence the accused to serve seven years in jail each’.***

12. The prosecution opposed the appeal, the learned prosecution Counsel, Mr. Kihara stated that the stolen stock were valued at Kshs. 490,000/=. They were however recovered. He also noted that the first accused had not appealed.

### **SENTENCES IMPOSED IN SIMILAR CASES**

13. In **KISII HIGH COURT CRIMINAL APPEAL NO.17 OF 2016**, the accused had stolen one cow valued at Kshs. 20,000/=. A sentence of 5 years was reduced to 3 years.

14. In **LODWAR HIGH COURT CRIMINAL APPEAL NO.93 OF 2016**, the accused had stolen two goats valued at Kshs. 5,000/=. A sentence of 5 years was upheld.

15. In **VOI HIGH COURT CRIMINAL APPEAL NO.47 OF 2014**, the accused had stolen three bulls valued at Kshs. 150,000/=. A sentence of 10 years was reduced to 5 years.

16. In **NAIROBI HIGH COURT CRIMINAL APPEAL NO.1229 OF 2000**, the accused had stolen stock valued at Kshs. 6,000/=. A sentence of 7 years was reduced to 5 years.

17. Having looked at the above cases, I am of the view that each of them presented special circumstances that informed the decisions of the Honorable Judges.

18. In the instant case, I am of the view that the appellant is trying his luck with this appeal. He has not advanced any reason to persuade this honorable Court to interfere with the discretion of the learned trial Magistrate. I agree with the sentiments of the learned Magistrate that this offence is prevalent in the area where it was committed.

19. Stealing is a vice that should be frowned upon. In line with the objectives of sentencing, I am of the view that the sentence of seven years is neither harsh nor excessive in the circumstances of this case. It might deter other people in the area from committing the offence.

20. The appellant has already served 2 and a half years in prison and according to his grounds of mitigation, he has acquired technical skills in carpentry as well as other achievements. The remaining period will in my view be beneficial to him as he can use it to perfect his skills.

**CONCLUSION**

**i. The appeal should be dismissed.**

**ii. The conviction is affirmed.**

**iii. The sentence confirmed.**

**SIGNED, DATED AND DELIVERED THIS 11<sup>TH</sup> DAY OF DECEMBER, 2017.**

**C. KARIUKI**

**JUDGE**

.....