



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL APPEAL NOS 29 & 30 OF 2015

PETER NJUGUNA NJAMBI

MARTIN MUNENE KARIUKI.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in CR 657/15 at Embu

Chief Magistrate's Court by V.O. Nyakundi - RM on 16th April, 2014)

JUDGEMENT

1. The appellants have appealed against their sentence of ten years imprisonment following their plea of guilty in respect of a charge of stealing one bull valued at Kshs 28,000, contrary to section 278 of the Penal Code (Cap. 63) Laws of Kenya, imposed by the court of the Resident Magistrate at Embu on 16th April 2015. They were also charged in the alternative with handling stolen property namely the bull contrary to sections 322 (1) as read with section 322 (2) of the Penal Code.
2. Ms Mbae for the respondent supported their sentence.
3. The appellants raised seven grounds of appeal in their separate petitions. The grounds are similar and I consolidated them and dealt them as one petition. In ground 1 of the petition of appeal, the appellants have stated the unchallenged fact that they did not plead guilty. In ground 2 they have also stated the unchallenged fact that they were convicted and sentenced to 10 years imprisonment. In ground 3 they have stated that they seek the mercy of the court to reduce the sentence imposed upon them.
4. In ground 4 they have stated that they are poor men. In ground 5 they have stated that this was their first time to appear in court in respect of being charged with an offence. In ground 6 they have stated that they intended to adduce further grounds in the course of hearing of their appeals. And finally in ground No 7 they have stated that they are self dependent and are casual labourers.
5. This is a first appeal. As a first appeal court, I am required to re-assess the principles upon which the appellants were sentenced and come to my own conclusions as to whether the principles regarding sentencing were followed. According to *Wanjema v. R (1971) EA 493* sentencing is a matter for the discretion of the trial court. An appeal court may only interfere with it if the following factors are shown to exist:

1. That the trial court overlooked some material factor.
2. That the trial court took into account some immaterial factors.
3. That the trial court acted on a wrong principle.
4. That the trial court imposed a manifestly excessive sentence.

6. In sentencing the appellants, the trial court took into account that they were first offenders. It went further to take into account that the offence was rampant in the area. It also took into account that “in this case it tends to loss of life”. Finally, it stated that a severe sentence was called for. It is clear from the sentencing notes that the trial court failed to take into account that the bull had been recovered. This is one ground of their written submissions in which both appellants pointed out that the recovery of the bull as a factor in sentencing was ignored. It therefore seems that the trial court erred in law for not taking into account a favourable relevant factor in sentencing the appellants.

7. Furthermore, the trial court took into account that the offence was rampant in that area and concluded that the prevalence of the offence in that area tended to loss of life. In taking into account that the prevalence of the offence in the area tended to loss of life, the trial court fell in error in taking into account a factor that was not relevant in sentencing the appellants.

8. In the light of the foregoing errors of fact and law, I find that the sentence imposed by the trial court should be interfered with. In doing so I find that the maximum provided for for the offence of stock theft is 14 years imprisonment. In the circumstances, the sentence imposed on the appellants is hereby reduced to five years imprisonment. The appellants appeal succeeds to that extent only.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at **EMBU** this **19th** day of **APRIL 2016**

In the presence of both the appellants and Ms Mbae for the State

Court clerk R. Njue

J. M. BWONWONGA

JUDGE

19.04.16