

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 16 OF 2015

KAMAU LESINGIRAN.....1ST APPELLANT

JESIN LOBUK 2ND APPELLANT

JACOB LABARU LETARKUSH alias JAMAL 3RD APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

***(Appeal from the Judgment of the Principal Magistrate's Court at Mararal Hon C. N Ndegwa -
Principal Magistrate delivered on the 15th December 2015 CMCR Case No. 903 of 2014)***

JUDGMENT

The three appellants **KAMAU LESINGIRAN**, (1st Appellant) **LESIN LOBUK** (2nd Appellant) and **JACOB LABARU LETARKUSH alias JAMAL** were all charged at the Maralal Law Courts with the two counts of **STEALING STOCK CONTRARY TO SECTION 278 PENAL CODE**. All three appellants pleaded guilty to the charge. The facts were duly read out to them and all three accepted the facts as read out. The trial court then convicted the appellants on both counts. They were all allowed an opportunity to mitigate after which they were each sentenced to serve five (5) years imprisonment on each count. The sentences were ordered to be served concurrently.

Each appellant filed an appeal which was later consolidated. On the date the appeal came up for hearing all the three appellants indicated that they did not seek to challenge their convictions. They were only appealing against the sentences imposed which they termed as harsh and excessive.

MS NYAKIRA learned Stated Counsel opposed the appeal. She submitted that all three appellants having pleaded guilty were properly convicted.

I have considered the appeal against sentence. The maximum penalty for the offence is 15 years. The facts reveal that the livestock stolen were slaughtered by the appellants (probably in order to sell the meat) thus no recovery was made. The 5 year sentence imposed was lawful but in view of the fact that all three were first offenders an option of a fine ought to have been considered.

I do allow this appeal and I set aside the sentence imposed by the trial court. In its place I substitute a fine of Ksh 8,000/= on each count for each accused making a total of 16,000/= fine each, in default to serve one (1) year imprisonment. The sentences to run from the date of conviction in the trial court. It is so ordered.

Dated in Nakuru this 29th day of July, 2016

Appellants all in person

Ms Rugut for the DPP

Maureen Odera

Judge

29/7/2016