**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO.508 OF 2013**

**MICHAEL WAWERU MWANGI ..... APPELLANT**

**VERSUS**

**REPUBLIC …….... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No.264 of 2013 of the Senior Principal Magistrate's Court at Kigumo by Hon. B. Khaemba – Senior Resident Magistrate)*

**JUDGMENT**

The appellant, **MICHAEL WAWERU MWANGI**, was convicted of unnatural offence contrary to section 162 (b) of the Penal Code.

The particulars of the offence were that on 22nd March 2013 at Kanderendu village, in Kigumo District of Murang'a County, had carnal knowledge of a cow.

He was sentenced to 5 years imprisonment.

He now appeals against both conviction and sentence.

The appellant was in person. He had raised three grounds of appeal but at the time of hearing he applied to withdraw his appeal on conviction and addressed the court on sentence only.

The state opposed to the appeal on sentence through M/s. Lydia Wang'ombe, the learned counsel.

Before a court in its appellate jurisdiction appellate jurisdiction can interfere with the sentence meted out by the trial court, it must be satisfied that the trial court acted on the wrong principle or overlooked some material factor or that the sentence was manifestly excessive in the circumstances of the case. The court of appeal in the case of **JOHN MUENDO MUSAU Vs. REPUBLIC [2013] eKLR** made the following observations on the issue:

**On the sentence, *section 26 (2)* of the Penal Code provides that where the prescribed sentence is imprisonment for life or any other period, the trial court has the discretion to pass a sentence of imprisonment for a shorter period. Situations where an appellate court would interfere with the discretion of a trial court on the issue of sentence have in the past been clearly defined by this Court. An appellate court would interfere only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. Those circumstances were well illustrated in the case of *NELSON Vs. REPUBLIC [1970] E.A. 599,* following *OGALO son of OWUORA Vs. REPUBLIC (1954) 21 EACA 270* as follows:**

***"The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James v Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor! To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershewsity (1912)***

***C.CA 28 T.LR 364."***

*In the instant case it is evident that the sentence meted out was lenient in the circumstances. I have no reason to interfere with the sentence. The appeal against the sentence is therefore dismissed.*

**DATED at MURANG'A this 19th day of August 2016**

**KIARIE WAWERU KIARIE**

**JUDGE**