



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NANYUKI

HCCRA. NO. 58 OF 2016

SURVIVOR LENALOSI.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence by **Hon. B.S.KHAPOYA SENIOR RESIDENT MAGISTRATE** dated 18th February 2015 in Maralal Principal Magistrate's Court Criminal Case No. 197 of 2015)

JUDGMENT

1. **SURVIVOR LENALOSI** was charged before Maralal Principal Magistrate's court with the offence of **Stealing stock Contrary to Section 278 Cap 63 of the Penal Code** . He pleaded guilty and was sentenced to serve 4 years imprisonment.
2. He is aggrieved by that sentence and has by this appeal sought a lesser sentence.
3. On conviction under Section 278 Cap 63 the sentence set out is imprisonment for a period not exceeding 14 years.
4. The appellant has filed grounds of appeal which are essentially mitigation. He states thereof that he is remorseful and pledges to leave a reformed life. He repeats those grounds in his written submission and further states therein that he is a family man and he has, since being sentence, engaged in Islamic activities and has enrolled in metal work course and had attained grade II.
5. The Senior Principal Prosecution counsel Mr.Tanui opposed the appellant's appeal. In opposing learned counsel stated that the offence the appellant committed was rampant in the area where he was arrested and that the trial court had noted that keeping of stock was the way residents of that area earned their living. Learned counsel was indeed of the view that the sentence of 4 years was lenient to the appellant and that accordingly he submitted that the appeal has no merit.

COURT'S DETERMINATION

6. There are two cases that set out what appellant court should consider when considering an appeal against sentence.

Those cases are

The first is **MOSES GITAU WAITHAKA-Vs-REPUBLIC(2007)eKLR** where it was held:

“In matters of sentencing, the sentencing court exercises some discretion. Unless it is shown that in exercising the discretion, the sentencing court acted on wrong principle, failed to take into account relevant matters, took into account irrelevant considerations, imposed an illegal sentence, acted capriciously or that the sentence imposed was harsh and excessive the Appellate Court would hardly interfere with the sentence imposed.”

The second case is **Macharia Vs Republic (2003)KLR 115**, where the court stated that:-

*“The court does not alter a sentence on the mere ground that if the member of the court had been trying the appellant, they might have passed a somewhat different sentence.....The court will also not ordinarily interfere with the discretion exercised by a trial judge unless as was held in **James Vs Republic(1950)EA 147**. It is evident that the Judge has acted upon some wrong principles or overlooked some material facts.”*

7. The learned trial Magistrate in sentencing the appellant noted that the offence the appellant committed was rampant in the area while Livestock keeping was the sole way of earning a living for majority of house hold in the area. The trial Magistrate in sentencing however failed to consider that the appellant was a first time offender and that he had pleaded guilty and thereby had saved the court from engaging in a protracted trial. In my view had the trial court noted that it would not have sentenced the appellant to 4 years. It is on that ground that appellant's appeal against sentencing succeeds. **The appellant sentence of 4 years is hereby set aside and the appellant is hereby sentenced to serve 3 years sentence which sentence shall run from the date of his conviction.**

Dated and Delivered at Nanyuki this 26th October, 2016

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant – Njue

Appellant: Survivor Lenalosi

For state

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE