



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL APPEAL. NO. 62 OF 2015**

**SIMON LONGIRO..... APPELLANT**

**-VERSUS—**

**REPUBLIC .....RESPONDENT**

*(Being an appeal from the original conviction and sentence in Maralal Principal Magistrate's Court Criminal Case No. 184 of 2015 by Hon. B.S Khapoya Senior Resident Magistrate on 16<sup>th</sup> February, 2015.)*

**JUDGMENT**

1. **SIMON LONGIRO** the appellant herein was charged with the offence of **stealing stock Contrary to Section 278 of the Penal Code Cap 63** before the Principal Magistrates Court Maralal. He was convicted as charged on his own plea of guilt. He was sentenced to serve 4 years imprisonment. He has appealed against that sentence.
2. The grounds upon which he has appealed against sentence amount to mitigation. These are the mitigations that he placed before the trial court and which were considered when he was sentenced.
3. The facts of the case that were given before the trial court by the prosecution were that the complainant left his 8 goats grazing near Wamba town Samburu County and when he returned for them he found them missing. Later that evening the appellant went to an elder's home, near Meibai Conservancy Camp, seeking a place to sleep for the night. The elder suspected the goats that the appellant had with him were stolen. He reported his suspicion to the police and later the complainant identified the goats as those that had been stolen from him.
4. The appellant on being convicted on his plea of guilt informed the trial court, just as he informed this court, that he has children who he left and who depend on him.
5. The appeal against sentence was opposed by the Senior Principal prosecuting Counsel Learned Counsel Mr. Tanui submitted, indeed correctly, that the maximum sentence under Section 278 of Cap 63 is 14 years. That the trial court bore in mind that the appellant had no previous convictions and that he had children dependent on him. In his view the sentence of the trial court was lenient.
6. In the case **REPUBLIC –V- JAGANI & ANOTHER [2001] KLR** the court in considering the purpose of sentencing stated thus:-

*“The purpose of a sentence is usually to disapprove of denounce unlawful conduct as a deterrent to deter the offender from committing the offence, to separate offenders from society if necessary to assist in rehabilitation of offenders, and in retribution by providing for reparation*

*for harm done to victims in particular and to society in general. It is also seen as promoting a source of responsibility in offenders.”*

7. The appellant by his submissions stated that since his imprisonment he had engaged in Christian activities and that he had received counseling. He said that he was now reformed. He also has received training in prison. Bearing in mind that he was a first offender when he appeared before the trial court and since the appellant has submitted he has reformed and according to his own words he is now a changed man it does seem to this court that the prison sentence he has served thus far has been deterrent and has rehabilitated him. As a consequence of the above and in view the power to review sentence granted to an appellant court under **Section 354 of Criminal Procedure Code** this court is of the view that this is a fit case to review sentence of the appellant.

8. The appellant’s appeal against sentence is allowed. The appellant’s sentence of the trial court is hereby set aside. The appellant is sentenced to prison for the period so far served.

**I order that the appellant be released from custody unless he is otherwise lawfully held.**

*Dated and Delivered at Nanyuki this 19th December, 2016*

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: .....

Appellant: Simon Longiro

For state: .....

**COURT**

Judgment delivered in open court

**MARY KASANGO**

**JUDGE**