

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL APPEAL NO.36 OF 2016

BETWEEN

ALFRED OCHIENGAPPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from original conviction and sentence in original Homa Bay CM's Court Criminal Case No.359 of 2016 – Hon. P. Gichohi, CM, dated 5th July, 2016)

JUDGMENT

1. **ALFRED OCHIENG** (the appellant) was convicted on his own plea of guilty to a charge of stealing stock contrary to Section 278 of the Penal Code, and sentenced to serve three years imprisonment on 5th July, 2016.
2. The prosecution case was that on the night of 30th June 2016 and 1st July 2016 at **NDUTA** village in Homa Bay County, he stole four (4) goats valued at Kshs.20,000/= the property of **VITALIS NYAMBOK**.
3. The goats were stolen from the open at night and two were recovered while awaiting to be slaughtered at a slaughter house, while the other two had already been slaughtered.
4. The appeal is purely on sentence – the appellant explains that he has a wife and a young child, and he was their sole breadwinner. He urged the court to reduce his sentence, saying he is a first offender and has learnt the price of crime.
5. In opposing the appeal, Mr. Oluoch submits that the sentence is not harsh.
6. The appellant filed written submissions explaining that the complainant owed him money whose refund was not forthcoming, despite several demands made. The appellant had a young child who was hospitalised and he got angry at the delay in getting back his money, so he went and took the goats without the complainant's permission.
7. Stock theft, as pointed out by Mr. Oluoch attracts a 14 years' sentence – Appellant was only sentenced to serve 3 years. The appellant had quickly disposed of the goats – it was just by good luck that two were found awaiting slaughter but two others had already met their fate. In my view the sentence is commensurate with the offence and I find no reason to warrant interfering with the sentence.
8. Consequently the appeal is dismissed and sentence confirmed.

Delivered and dated this 15th day of December, 2016 at Homa Bay

H.A. OMONDI

JUDGE