



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 12 OF 2015

IRYAN LETUPUKWA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

***(Appeal from the Sentence of the Principal Magistrate's Court at Maralal, Hon. C. N Ndegwa –
Principal Magistrate delivered on the 15th December, 2014 in CMCR Case No. 904 of 2014)***

JUDGEMENT

The Appellant **IRYAN LETUPUKWA** has filed this appeal in which he seeks to challenge **only** his sentence.

The Appellant was arraigned before the learned Principal Magistrate sitting at Mararal Law Courts on a charge of **STEALING STOCK CONTRARY TO SECTION 278 PENAL CODE**. The particulars of the charge were that

“On the 10th day of December, 2014 at around 6.00am at Opour Village in Samburu County within the Republic of Kenya stole one bull red in colour valued at Ksh 25,000/= the property of MURUNDA LETUPUKWA.”

The appellant pleaded guilty to the charge. Thereafter the facts were read out and the appellant maintained his plea of Guilty. He was hen convicted. After listening to his mitigation the trial magistrate sentenced the appellant to serve six (6) years imprisonment.

During the hearing of his appeal the appellant confirmed that he did not seek to challenge his conviction. He was only appealing against the sentence of six years imprisonment.

Being a court of first appeal this court is obliged to examine the record an order to satisfy itself that the plea was procedurally taken and that the appellant's plea of guilty was in fact unequivocal.

The procedure for recording a plea of Guilty are set out in Section 207 of the Criminal Procedure Code. These principles were enunciated in the case of **ADAN Vs REPUBLIC (1973) E. A 445** where it was held as follows

“(i) The charge and all the essential ingredients of the offence should be explained to the accused in the language or in a language he understands

(ii) The accuseds own words should be recorded and if they are an admission, a plea of guilty should be recorded.

(iii) The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts

(iv) If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused’s reply should be recorded”

MR. MOTENDE learned State Counsel opposed this appeal and urged the court to confirm and uphold the six (6) year sentence which he termed as lawful.

I have carefully perused the record of the proceedings before the trial court. I note that the proceedings were translated into the Samburu language which the appellant’s well understood. Indeed it is indicated that upon having the charge read out in Kiswahili, the appellant responded in the same language saying

“Kedede – ie Ni Ukweli”

Thereafter the facts were read out by the prosecution for the appellant replied

“I have understood the facts. The facts are correct”.

The court proceeded to convict the appellant on his own plea of Guilty. Upon being called upon to mitigate the appellant said

“I pray for forgiveness”

This statement further reinforces the fact of his guilty plea as there would be no need to seek forgiveness if he had committed no wrong.

I am satisfied that the appellant’s plea was properly recorded. I find that his plea of **‘Guilty’** to the charge was unequivocal. I find that his conviction was proper and I do confirm the same.

The appellant has appealed against his sentence on the basis that it was excessive. Section 278 of the Penal Code provides for a maximum sentence of fourteen (14) years for the offence of Stealing Stock. The Sentence of 6 years was well below this statutory maximum.

However, the learned trial magistrate ought to have given consideration to the following factors in deciding upon a sentence. Firstly the appellant pleaded guilty thus saving the court from the conduct of a trial in the matter. Secondly the stolen bull was recovered and returned to its owner. Thirdly the appellant was a first offender. In the circumstances the trial magistrate ought to have considered the option of a non-custodial sentence. I do agree that given the above circumstances a custodial sentence was harsh. I therefore allow the appeal against sentence. I set aside the six (6) year term imposed by the trial court. In its place I substitute a fine of Ksh 15,000/= in default the appellant will serve three (3) years imprisonment. This sentence to run from the date of his first conviction in the trial court.

Dated in Nakuru this 9th day of December, 2016

Read in open court

Maureen A. Odera

Judge

9/12/2016