



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL APPEAL NO. 85 OF 2014**

**MULI MATEI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Appeal from the conviction and sentence in Kyuso Principal Magistrate's Criminal Case No. 399 of 2014 – E.M Mutunga RM)***

**JUDGMENT**

The appellant was charged in the subordinate court with stealing stock contrary to section 278 of the Penal Code. The particulars of the offence were that on 7th September 2014 at Kasyongira Village Kimangao Sub Location of Kyuso Sub County within Kitui County stole a she goat valued at Kshs. 7,000/= the property of Grace Kasyoka Mwaniki. In the alternative he was charged with handling stolen property contrary to section 322 of the Penal Code. The particulars of the offence were that on the 7th September 2014 at Mataka Sub Location of Kyuso Sub County within Kitui County otherwise than in the course of stealing dishonestly retained one she goat knowing it to be stolen property or unlawfully obtained.

The charges were first read to him on the 8th day of September 2014. On that day, he pleaded not guilty to both to the main and alternative count. The matter was put for mention on the next day which was 9th September 2014 to allow the prosecutor apply for denial of bail. On that 9th of September 2014 the appellant was released on bond of Kshs. 20,000/= with one surety.

The matter came up against on 17th September 2014, when the charges were read to him again and he pleaded guilty. The facts were then summarized by the prosecutor and he admitted them. He was sentenced to serve 5 years imprisonment.

Aggrieved by the decisions of the trial court, the appellant has now brought the present appeal. The grounds of appeal are in summary as follows.

1. The magistrate erred when he convicted and sentenced him without considering that it was poverty in his family that made him commit the offence.
2. The magistrate erred when convicting and sentencing him without considering that he had the burden of eight children and their mother who depended on him for their basic needs.
3. The learned magistrate erred in convicting and sentencing him very severely without considering that he had a health problem of tuberculosis.
4. The learned magistrate erred in convicting and sentencing him very severely without considering whether his wife would adequately cater for the children as indicated in the mitigation.
5. The trial magistrate erred in sentencing him very severely without considering that he had only

- one living parent the mother who was aged and depended on him for her needs.
6. The trial magistrate erred in convicting and sentencing him very severely without considering that he was a first offender and pleaded guilty without giving the court hard time
  7. The magistrate erred in convicting and sentencing him very severely without considering his age and health problems.

At the hearing of the appeal, the appellant submitted that he was wrongly connected with stolen goats. He contended that on 6th of September 2014 he was from the market at Kyuso when he was informed about the presence goats which had been at his home overnight. He stated that the goats were not his.

Mr. Mwangi the learned Prosecuting Counsel opposed the appeal. Counsel submitted that initially on the 8th September 2014 when charges were read to the appellant in Kikamba language, he recorded a denial to both charges and a plea of not guilty was entered. That on the 17th September however, he changed his plea to guilty. Facts were then stated by the prosecutor and he confirmed the same to be true. Counsel submitted that the appellant admitted the charge and as such there can be no appeal against conviction. Lastly counsel submitted that the maximum sentence for the offence was 14 years imprisonment and he was sentenced to only 5 years imprisonment. Being a repeat offender, that sentence was reasonable and should be upheld.

In response to the Prosecuting Counsel's submissions, the appellant maintained that the sentence was harsh and requested this court for a discharge.

This is a first appeal. As a first appellate court, I am required to re-evaluate what is on record and come to my own conclusions.

The appellant was convicted on his own plea of guilty. I have perused the record. Though in the grounds of appeal he was contesting merely the harsh sentence, in his submissions in court the appellant appeared to be challenging the conviction.

Having perused the record I find that on the first day of charge that is 8th September 2014 the appellant pleaded not guilty. The matter was mentioned on 9th September 2014 for a bail application. On the 10th September 2014 he was released on bond of Kshs. 70,000/= with a surety of similar amount and the hearing was put on 22nd October 2014. The matter however came up against in court on 17th September 2014 when the appellant changed his plea to guilty. The facts were then summarized by the prosecutor and he agreed to the facts.

The record does not show whether the court actually convicted him. What followed after the appellant agreed to the facts was that the prosecutor stated that the appellant had a previous conviction in Kyuso in 2012 and was sentenced to serve 3 years imprisonment. Thereafter, the appellant in mitigation stated that he had been charged previously as narrated and asked for leniency as he paid school fees for children, and was bread winner and would not drink alcohol again. The learned magistrate thereafter sentenced him to serve 5 years imprisonment.

Though there was no specific record of a conviction, in my view that was an oversight on the part of the trial court. Such oversight did not prejudice the appellant at all. The appellant was aware that he was convicted and sentenced. I find and hold that the appellant was properly convicted. He cannot now challenge the conviction.

With regard to severity of sentence, it is clear to me that the appellant had been previously convicted in Criminal Case No. 113 of 2011. The magistrate took into account that the offence committed herein was a similar one. The magistrate also specifically stated that he took into account the mitigation of the appellant. I cannot doubt the exercise of discretion in sentencing by the trial court herein. I find no mistake committed by the trial magistrate. The sentence is lawful. It is an appropriate sentence for a repeat offender. I will thus uphold the sentence.

Consequently and for the above reasons, I dismiss the appeal of the appellant and uphold both the

conviction and sentence of the subordinate court.

**Dated and delivered at Garissa this 18th day of May, 2015**

**GEORGE DULU**

**JUDGE**