

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL APPEAL NO. 12 OF 2015

JULIUS MAGIGE CHACHAAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in Kehancha Court Criminal case No. 285 of 2014 delivered on 12th May, 2014 by Hon. R. Aganyo, RM)

JUDGMENT

1. The appellant was charged with stealing of stock contrary to **section 278** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. He was accused of stealing the goat of one **Peninah Boke** worth 5,000/= at Gwitembe village, Kuria East District on 10th May 2014. He pleaded guilty as was sentenced to seven (7) years imprisonment.
2. He appeals against the sentence which he feels is harsh and excessive. Learned counsel for the State, Ms Owenga, also concedes the appeal.
3. I am aware that the appellate court should only interfere with a sentence if the trial court took into account irrelevant factors, failed to take into account relevant factors or in the circumstances the sentence was harsh or excessive.
4. The appellants pleaded guilty and although he did not say anything in mitigation, the learned Magistrate in her sentencing notes recorded the following:-

I note the demeanour of the accused who is not remorseful for his actions. As a deterrent to others in this jurisdiction where the offence is rampant, I hereby sentence him to serve seven (7) years in prison.

5. In my view, there was nothing to suggest that he was not remorseful. Even though he did not say anything in mitigation, the learned magistrate ought to have considered the fact that he pleaded guilty, the value of the goat and the fact that it was returned. If the learned magistrate had considered these facts, she would have considered the possibility of imposing a non-custodial sentence. She however, laid emphasis on external factors. She therefore erred in principle.
6. I set aside the sentence and in its place I impose a sentence of six (6) months community service with effect from the date of this judgment. The appellant is set free unless otherwise lawfully held.

DATED and DELIVERED at MIGORI this 14th day of May 2015.

D. S. MAJANJA

JUDGE