

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 289 OF 2013

SOLOMON NELSON1ST APPELLANT

JOSHUA MELAU.....2ND APPELLANT

JACKSON SERNKUR LAPIT3RD APPELLANT

MOSES MWOLEL4TH APPELLANT

DAUNDI TOBIKO5TH APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Machakos Chief Magistrate's Court, Criminal Case No. 793 of 2013 by Hon. E.K. Too Ag. Snr. Resident Magistrate on 19th July, 2013)

J U D G M E N T

The appellants herein were charged with two counts of stealing stock contrary to **Section 278** of the **Penal Code**.

The particulars were that on the night of 18th and 19th day of July, 2013 at Katelembo village, Kathekakai location in Machakos County, jointly stole one goat and one sheep the property of **Samuel Mutilili** valued at Ksh. 10,000/=.

In count two the particulars were on the night of 18th July and 19th July, 2013 at Katelembo village, Katelembo sub-location in Kathekakai location within Machakos county, jointly stole two(2) goats valued at Kshs. 7,000/= the property of **Daniel Nthiani Mutisya**.

The appellants were sentenced to serve three(3) years imprisonment on both counts which were to run concurrently.

The appellants filed separate appeals but during the hearing the five appeals were consolidated and for purposes of recording the operative file is Criminal Appeal No. 289 of 2013. At the hearing of the appeal, they told the court that they have reformed and urged the court to reduce the sentence for them.

Mr. Machagu for the State told the court that he is not opposing the mitigation of the sentence. He has no objection with the appellants being released. In fact, he conceded to the appeal.

The court has considered the mitigation by the five appellants and the fact that they are first offenders as noted by the trial court. Though the trial magistrate also noted that the offence is rampant, the court considers that the appellants have served a substantial length of the sentence and in view of the fact that the State has conceded the appeal.

I hereby reduce the sentence of three (3) years to the term already served and I order that all the five appellants be released forthwith unless otherwise lawfully held for other reasons.

Dated and Delivered at Machakos this 24th day of July, 2015

LUCY NJUGUNA

JUDGE