



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT

CRIMINAL APPEAL NO. 16 OF 2015

SAMUEL REIGOAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case No.560 of 2014 of the Principal Magistrate's Court at Marsabit by Boaz M.Ombewa – Ag. Principal Magistrate)

JUDGMENT

The appellant, **SAMUEL REIGO**, was convicted on a count of Stealing stock **contrary to section 278 of the Penal Code**. He was then sentenced to serve seven years imprisonment. This was after he had pleaded guilty.

The particulars of the offence were that on 28th June, 2014 at Karantina village in Marsabit County, he stole a bull valued at Kshs.45 000 the property of Alice Balo.

At the time of hearing he indicated he was appealing against sentence only.

Section 278 of the penal code provides as follows:

If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.

This section prescribes a maximum sentence of not more than fourteen years imprisonment. This is irrespective of the number of the stolen animals.

Before a sentence is passed under this section, a trial magistrate ought to be guided broadly by the following considerations:

- (i) The age of the accused person,
- (ii) The level of education if any especially where he comes from a community whose culture glorifies stock theft,
- (iii) The number of animals involved,

(iv) The criminal record of the accused if any; and

(v) The mitigation proffered by the accused.

Although the charge sheet did not provide the age of the accused, to me he appeared a young man in his early thirties. He is illiterate according to what he told the court and from observation. He comes from the Samburu community where stock theft is taken to be a normal lifestyle.

It is very important for the trial court to send out a very strong signal that outdated cultural practices and which are retrogressive are not to be condoned by the law. However, it is also important to factor in the five broad guidelines so that justice can be tempered with a tinge of mercy with a view to educate communities who are still lagging behind in education.

The appellant is a first offender. This is what the trial court was informed. The stolen bull was recovered.

Having considered all the necessary factors, I am persuaded to interfere with the sentence imposed by the learned trial magistrate. The appellant will serve 2 (two) years imprisonment from the date he was sentenced by the trial court. His appeal on sentence succeeds to that extent.

Dated at MARSABIT this 12th Day of November 2015

KIARIE WAWERU KIARIE

JUDGE