



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**Criminal Appeal No. 56 Of 2009**

**John Wachira Mwangi.....Appellant**

**Versus**

**Republic .....RESPONDENT**

*(arising from the judgment of Hon. L. Mbugua Ag. Principal*

*Magistrate Karatina in Criminal Case No. 385 of 2008)*

**JUDGMENT**

1. The Appellant was charged with the offence of unnatural offence contrary to section 162(6) of the Penal Code the particulars of which were that on 8th day of July 2008 at Iriani Location in Nyeri District within Central Province had carnal knowledge of a sheep which was the property of ESTHER WANGARE KARIITHI.
2. He pleaded not guilty, was tried convicted and sentenced to serve Ten (10) imprisonment. Being dissatisfied with the said sentence filed an appeal against the same and prayed for lesser severe sentence a probation order in respect of section 4 of Cap 64 and quashing the conviction and setting aside the sentence.
3. When the appeal came up for hearing before me the Appellant who was unrepresented submitted that he would like the court to look at the sentence while Mr. Njue submitted that the Appellant was sentenced to Ten (10) years.
4. It should be noted that the Appellant was convicted under section 162(6) where the lawful sentence provided for is an imprisonment for fourteen (14) years and the Appellant was sentenced to Ten (10) years only.
5. I therefore find that the said sentence was not harsh and find no merit for the appeal herein which I hereby dismiss.
6. Having dismissed the appeal herein I am of the considered opinion that the Appellant ought to benefit from the Revision jurisdiction of this court. I have taken into account his submission that he has a wife and two children and has been in custody since 11th July 2008 and the nature of offence he was charged with and the evidence of P.W.2 wherein he said that the Appellant told him that he was found when he was about to sleep with the sheep and P.W.4 who stated that he saw one sheep shaking and a man on top of it.
7. I would therefore revise the sentence herein to five (5) years imprisonment from 26th February 2009 and order that the Appellant be set free forthwith unless otherwise lawfully held to enable him seek professional help on his sexual orientation.

Dated, signed and delivered at Nyeri this 28th day of March 2014.

J. WAKIAGA

JUDGE

Court: Judgment is read in open court in the presence of the appellant and in the absence of the state.

J. WAKIAGA

JUDGE

