

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 4 OF 2014

BETWEEN

KENNEDY ODHIAMBO ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case No. 174 of 2012 of the Chief Magistrates Court at Oyugis, Hon. M. Kiema, RM dated 21st March 2012)

JUDGMENT

1. The appellant, **KENNEDY ODHIAMBO ODHIAMBO** was charged with the offence of stealing stock contrary to **section 278** of the ***Penal Code (Chapter 63 of the Laws of Kenya)***. It was alleged that on 10th March 2012 at Kanyina sub location in Rachuonyo South District within Homa Bay County with other not before the court he stole two sheep valued at Kshs. 2,300/= the property of Simon Opar Amadi. He also faced an alternative charge of handling stolen property contrary to **section 327(2)** of the ***Penal Code*** based on the same facts.
2. He was arraigned in court and pleaded guilty on the principal charge on his own volition. He was sentenced to serve 7 years imprisonment. He now appeals against the conviction and sentence.
3. I have considered the plea and I find that it was clear and unequivocal. The appellant understood the proceedings and the facts that were read to him disclosed the offence which he admitted. I affirm the conviction.
4. As regards the sentence, Mr. Oluoch, learned counsel for the State, concedes that sentence was harsh and excessive in the circumstances. The magistrate did not set out the basis for imposing the sentence of seven years yet the accused was a pleaded guilty, was a first offender and was remorseful and the stolen sheep were recovered.
5. The appellant has been in custody since 21st March 2012. He has served sufficient time.
6. The appeal is allowed to the extent that the sentence is quashed and substituted with that of time served. The appellant shall be set free unless otherwise lawfully held.

DATED and DELIVERED at HOMA BAY this 1st day of August 2014

D. S. MAJANJA

JUDGE