



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 84 OF 2011

DAUDI LOROGHWA SOWEWE..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 171 of 2010 of the Senior Resident Magistrate's Court at Taveta – Hon. Ndegwa - **SRM**)

JUDGMENT

The Appellant **DAUDI LOROGHWA SOWEWE** was Convicted and Sentenced to seven (7) years imprisonment for the offence of killing an animal contrary to section 338 of the Penal Code.

The particulars being that:-

“On the 22nd day of April, 2010 at about 5:00p.m. at Taveta, Taveta County he willfully and unlawfully killed an animal capable of being stolen namely a bull, valued at Ksh. 25,000/= the property of MSAFIRI LOKURO”.

This appeal is on Sentence.

In the petitions preamble the appellant pleads,

“I the aforementioned appellant after being dissatisfied and aggrieved by the Sentence do hereby lodge the grounds inter -alia”.

The grounds are that the learned trial magistrate meted out the maximum Sentence on the appellant which was unproportionate to the facts of the case.

Secondly, that he failed to consider the mitigation by the appellant. Thirdly, that he was a first offender and the Sentence imposed by the learned trial magistrate was harsh and excessive.

A perusal of the record of proceedings indicate that the Appellant pleaded guilty to the charges on the 17th day of June, 2010. The facts were read to him in Kiswahili as per record and he confirmed that they were correct and he was subsequently found guilty and Convicted accordingly.

The Law.

The offence of killing an animal contrary to section 338 of the Penal Code carries a maximum Sentence of fourteen (14) years imprisonment.

It is noted that the Accused pleaded guilty to the charge and hence did not waste Judicial time. He was treated as a first offender. Though the act of killing the animal was beastly, the Sentence of seven years (7) is harsh in the circumstances of this case. The Sentence of seven (7) years is reduced to four (4) years imprisonment.

The appellant will serve four (4) years imprisonment from the time of his Conviction. In the event that he has already served the imprisonment term of four (4) years he will be set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this **16th** day of **September, 2014**.

.....

M. MUYA

JUDGE

16TH SEPTEMBER, 2014

In open Court in the presence of:-

Mr. Jami for the State

The Appellant

Court clerk Musundi