

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO.110 OF 2012

PHILIP KIPROP KOMEN..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(BEING AN APPEAL FROM THE ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 1783 OF 2011 REPUBLIC VS PHILIP KIPROP KOMEN IN THE RESIDENT MAGISTRATE'S COURT AT ELDORET BY D.K. KEMEI, PRINCIPAL MAGISTRATE DATED 27TH MAY 2011)

JUDGMENT

1. The appellant was convicted on his own plea of guilty for killing an animal with intent to steal contrary to section 289 of the Penal Code. The offence was committed on 19th May 2011 at Chororget village, Keiyo South District. The facts read in court were straightforward: The complainant was herding six sheep on the road side. Later in the day, her son went to take the sheep to water. He found one missing. A search was mounted. The missing sheep was found; it was dead. It had a deep cut on the neck. Photographs of the sheep were taken. The carcass was then released to the complainant. The appellant was suspected to have committed the offence. He was arrested and arraigned in court. The value of the sheep was Kshs 2,000.
2. When those facts were read to the appellant, he confirmed them to be true. He was a first offender. In mitigation, he asked to be pardoned as his family would suffer. The learned trial Magistrate found that offences of that nature were prevalent in the area; which called for a deterrent sentence. He sentenced the appellant to jail for seven years.
3. The appellant was aggrieved by his conviction and sentence. He lodged an appeal to the High Court. There are five grounds of appeal filed on 11th April 2011. In a synopsis, the appellant's case is that the sentence was manifestly excessive. At the hearing of the appeal, the appellant's learned Counsel, Ms. Isiaho, quite rightly, limited her appeal to the sentence. The appeal is contested by the State.
4. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. See *Njoroge v Republic* [1987] KLR 99, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
5. The appellant's plea of guilty was unequivocal. From the charge sheet and the facts, the sheep was valued at Kshs 2,000. The carcass was returned to the complainant. The appellant was a first offender and pleaded for leniency. True, the learned trial Magistrate considered the prevalence of the offence. That may have called for a deterrent sentence. But considering all the circumstances of the case, the sentence of seven years was too punitive. See *Orwochi v Republic* [1976-80] 1 KLR 1638 and *Marando v Republic* [1976-80] 1 KLR 1639 where sentences of *four* years for *manslaughter* were held to be manifestly excessive. I think the principle to be distilled from these cases is that sentencing must take into account the unique circumstances of each case.
6. For all of those reasons this appeal is allowed. The sentence passed against the appellant is set aside. The appellant has been in custody for nearly two and a half years. The sentence is reduced to the period already served. The appellant shall be set free forthwith unless held for some other lawful cause.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 25th day of October 2013

G.K. KIMONDO

JUDGE

Judgment read in open court in the presence of

Ms.....for the appellant.

Mr.....for the State.

Mr. P. Ekitela, Court Clerk.