



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL APPEAL NO. 179 OF 2012**

**ANTHONY MWANGI NJOKA .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(AN APPEAL ARISING FROM THE ORIGINAL CONVICTION AND SENTENCE IN  
CRIMINAL CASE NO. 156 OF 2010 AT THE SENIOR RESIDENT MAGISTRATE'S COURT  
AT GICHUGU ON 2.3.2010)**

**JUDGMENT**

The appellant **ANTHONY MWANGI NJOKA** was charged and convicted with the offence of stealing stock contrary to section 278 of the penal code.

The particulars of the offence as stated in the charge sheet are that on the 27<sup>th</sup> and 28<sup>th</sup> day of February, 2010 at an unknown time during the night in Baragwi location in Kirinyaga District within Central Province, the appellant stole a brown he goat valued at kshs 7,000 the property of Oscar Njagi Mugo.

The conviction was entered on 2<sup>nd</sup> March, 2010 on the appellants own plea of guilty.

Following the conviction, the appellant was sentenced to seven years imprisonment. He was dissatisfied with the sentence imposed on him by the learned trial magistrate. He filed this appeal raising the following grounds:-

1. **That I did not waste courts time and stationary.**
2. **My lords, am a first offender and life term jail will ruin my life.**
3. **That I am remorseful for what I did and given another chance I will never repeat the same offence.**
4. **That the sentence meted against me is manifestly, harsh and excessive.**

When the appeal came up for hearing on 14<sup>th</sup> October, 2013, the appellant made oral submissions and urged the court to reduce the sentence to the period already served.

Mr Sitati, learned state counsel in his submissions opposed the appeal mainly on grounds that the sentence meted out against the appellant was lawful and lenient considering that the appellant had been convicted d of the offence of stealing stock contrary to section 278 of the penal code which attracts a penalty of less than 15 years and the appellant was not a first offender.

I have looked at the record of proceedings in the lower court. I have also considered the oral

submissions made by the appellant and Mr Sitati for the state.

I have noted that though the prosecution had informed the trial court that the appellant had a previous conviction of theft of farm produce, the said conviction was not admitted by the appellant nor was it proved by the prosecution by for instance producing a certificate of previous convictions.

In the circumstances, the appellant ought to have been treated as a first offender.

The learned trial magistrate when passing sentence did not indicate what factors he considered in reaching his decision to impose a sentence of 7 years imprisonment against the appellant. It is not clear therefore whether he treated the appellant as a first offender or a repeat offender.

It is not clear whether the learned magistrate considered the appellant's plea in mitigation since he made no notes prior to passing sentence.

Though it is clear from the record that the stolen goat was not recovered, I note that its value was given at kshs 7,000.

Considering that there was no proof that the appellant was not a first offender and given the value of the subject matter of the charge and the appellants plea in mitigation, it is my view that a sentence of 7 years imprisonment was rather harsh and excessive in the circumstances of this case.

In the result, I allow the appeal, set aside the sentence of seven years imprisonment and reduce it to the term already served. The appellant is to be released forth with unless otherwise lawfully held.

**C. GITHUA**

**JUDGE**

**17.10.2013**

**Before C. GITHUA –JUDGE**

**Ms Macharia for the state**

**Mr. Kariuki court clerk**

**Appellant present**

**Interpretation: English/Kikuyu**

**COURT- Judgment read, signed and delivered in open court.**

**C. GITHUA**

**JUDGE**

**DATED, SIGNED AND DELIVERED at KERUGOYA this 17th day of OCTOBER 2013 in the**

**presence of:-**

**The appellant**

**Ms Macharia for the state**

**Kariuki court clerk**