



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 10 OF 2013

STEPHEN WANDERA.....APPELLANT

VERSUS

REPUBLIC OF KENYA.....RESPONDENT

**(BEING AN APPEAL ON SENTENCE FROM ORIGINAL CRIMINAL CASE NO 288 OF 2013
IN BUSIA LAW COURTS).**

JUDGMENT

The Appellant was on 11th March 2013, charged before the Magistrate's court with the offence of stealing stock contrary to section 278 of the Penal Code in that on the night of 9th and 10th March 2013 at Bulanda Village Busia Township, stole one brown bull valued at Kshs. 16000/= the property of Esther Wandera. The Appellant pleaded guilty and accepted the facts are true after they were read over by the prosecutor. The prosecutor then presented the previous record indicating that the Appellant was to be treated as a first offender. The learned trial Magistrate thereafter proceeded to sentence him to seven (7) years imprisonment.

The Appellant, being aggrieved by the sentence, filed this appeal on 20th March 2013, which is based on the following four grounds;

1. That he pleaded guilty.
2. That he is a first offender
3. That he was not allowed to mitigate
4. That he is serving a long sentence.

During the hearing of the appeal, the state conceded that a sentence of seven years imprisonment given to the Appellant, was on the higher side considering that he was a first offender and that the maximum penalty for the offence is 14 years. I have carefully considered the grounds of the appeal and the submissions by Counsel appearing for the state and I find from the record that the Appellant was not given the opportunity to offer his mitigation. Had the learned trial magistrate afforded the Appellant the opportunity to mitigate, I am of the view he would have come to a more lenient sentence. This court is of the view that a sentence of 7 years imprisonment imposed in this case against the Appellant, who was a first offender, was harsh considering the value of the property stolen is said to be Kshs. 16,000/=. The offence was not of an aggravated nature and the sentence is hereby reduced to three years imprisonment.

It is so ordered.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON...17th DAY OF OCTOBER, 2013.

IN THE PRESENCE OF;