



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 335 OF 2010**

**(From the Original Conviction and Sentence in Criminal Case No. 63 of 2010 of the Senior Resident Magistrate’s Court – Taveta C.N. NDEGWA – S R M)**

SILAS MANTHI .....  
.....APPELLANT

VERSUS

REPUBLIC .....  
ACCUSED

**JUDGMENT**

**SILAS MANTHI** was charged with the offence of stock theft contrary to Section 278 of the Penal Code.

The particulars of the charge are that:

**“On the 14<sup>th</sup> day of February, 2010 at around 5:00 p.m. at Kiwalwa village in Taveta District of the Coast Province jointly with another not before Court stole twenty one goats valued at Kshs. 30,000/= the property of Goodwill Layani”.**

The appellant was tried and convicted. He was sentenced to serve **SEVEN years** imprisonment. He is aggrieved with the sentence and has appealed against it. He has filed the following grounds of appeal.

1. That the learned trial magistrate ought to have taken into account that I am a first offender and award me a non custodial sentence.
2. That the Learned trial magistrate ought to have meted a sentence that was economically compatible with the alleged worth of the stolen stock.
3. That the Learned trial Magistrate sentence of 7 years imprisonment was and is manifestly harsh and excessive given the cases circumstances.
4. That the Learned trial Magistrate ought to have meted out a sentence that was lenient and fair.

5. That the Learned trial Magistrate ought to have considered my mitigation.

The appeal has been opposed by the State Mr. Tanui, the Learned State Counsel submitted that, the offence carries a sentence of **14 years** and therefore the sentence of **7 years** was lenient. That, the Court took into account the number of the goats stolen and therefore the sentence is proper.

In my considered opinion, the appellant was given was a lawful and proper sentence. It's within the Law. However, some of the factors the Court ought to consider while passing sentences is the value of the subject matter (**Mathai Vs Republic (1983) KLR 422**) and whether there has been restitution of the property. In addition the effect of the sentence must be considered alongside the prevalence of the type of offence and the seriousness of the offence. The value of the subject matter is Kshs. 30,000/= the goats were recovered and the accused was a first offender. In the circumstances I shall take into account the said factors and the period he was on trial from 15<sup>th</sup> March, 2010 to Judgment and sentence. I set aside the sentence imposed and I substitute it with a sentence of **THREE years**, the same shall take effect from the date of sentence in the lower court.

Orders accordingly.

Dated, signed and delivered at Mombasa.

**G.L. NZIOKA**  
**JUDGE**  
**21<sup>ST</sup> MARCH, 2012**

**In the presence of:-**

Appellant present in person  
Ms Macharia for the State  
Cc Maroro  
**G.L. NZIOKA**  
**JUDGE**  
**21<sup>ST</sup> MARCH, 2012**