



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 74 OF 2010

(From the Original Conviction and Sentence in Criminal Case No. 361 of 2009 of the Resident Magistrate's Court WUNDANYI- F. MUNYI- R.M)

DANIEL NGURE M.APPELLANT
VERSUS
REPUBLICRESPONDENT

JUDGMENT

DANIEL NGURE MWAMBI was charged with the offence of un-natural offence contrary to section 162 (b) of the Penal Code.

The particulars of the charge are that:

“On the 3rd day of July, 2009 at within Coast Province, had unlawful carnal knowledge of an animal namely a Goat the property of TEREZI SHALI MWANYUMBA”.

He pleaded guilty to the charges, he was convicted and sentenced to serve **SEVEN years** imprisonment. He has appealed against the sentence on the following grounds:-

1. I entreat the Court for leniency on the grounds that I am contrite in heart and intend to lead a very useful life if discharged from prison.
2. The offence committed was a result of my drunkenness.
3. I am young and the only son to my mother who is confined to a wheelchair after being involved in a grisly road accident that left my father deceased.
4. I am the only one mother depend on in domestic chores after all siblings married their husbands.
5. I am a first Court appearance and owing to the gravity of the offence I still beseech the Court to be lenient with me and grant me a chance to reform and attend to my handicapped mother.

The State represented by the Learned State Counsel Mr. Tanui, has opposed the appeal on the ground that the offence carries a sentence of **FOURTEEN years** and the appellant was sentenced to **SEVEN years** only. That the offence is serious in nature. Hence, the sentence should be upheld.

I have considered the appeal, the grounds thereof, the submissions in support thereof and the

submissions in opposition thereto. I find firstly, that by pleading guilty the appellant showed admission of the offence (hopefully) and that he had realized it was wrong to commit the offence. Secondly, he saved the Court's time. Thirdly, he was treated as a first offender. However, I do appreciate the trial Magistrate sentiments that such offences are prevalent and calls for a deterrence sentence. I also do appreciate the sentence provided for the offence is severe. **But** the sentence meted too should aim at rehabilitation, taking into account the fact that the appellant is a first offender. I therefore find that it would be in the interest of justice if I were to reconsider the sentence imposed upon the appellant. I therefore set aside the sentence imposed and I substitute it with a sentence of **FIVE years** to run from the date of sentence in the lower Court.

Orders accordingly.

G.L. NZIOKA

JUDGE

21ST MARCH, 2012

Dated, signed and delivered at Mombasa

G.L. NZIOKA

JUDGE

21ST MARCH, 2012

In the presence of:-

Appellant in person

Ms Macharia for the State

Cc Mororo

G.L. NZIOKA

JUDGE

21ST MARCH, 2012