



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 37 of 2011

STEPHEN KURIA MWAURA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case No. 682 of 2010 of the Senior Principal Magistrate's court at Limuru by Mary Anne Murage (Mrs) (Principal Magistrate)

J U D G M E N T

The appellant, **STEPHEN KURIA MWAURA**, was convicted for the offence of Stealing Stock **contrary to section 278 of the Penal Code.**

The conviction was founded upon his own plea of "Guilty".

The appellant, jointly with another person, stole five (5) sheep belonging to the complainant. The said sheep were valued at Kshs.30,000/-.

After the appellant was arrested by members of the public, he led them to the other suspect. The appellant and the said other suspect were beaten up by the members of the public. The appellant's accomplice later died due to the injuries he suffered from the beatings.

However, the stolen sheep were all recovered.

After conviction, the appellant told the court, in mitigation, that he was 18 years old. He also said that he was ready to change his ways.

The learned trial magistrate considered placing the appellant on a non-custodial sentence. However, the Report of the Probation Officer revealed that the appellant had dropped out of primary school because of being a truant.

The Report further revealed that the appellant smoked bhang, and was engaged in unbecoming behaviour, along the streets of Limuru.

In 2008 the appellant was committed to a Borstal Institution for 3 years after being convicted for stealing. He was released on licence, in 2009.

Therefore, when he stole the 5 sheep on 21st June 2010, the appellant had violated the

licence. Consequently, the Probation officer recommended that the court should deal with the appellant as it deemed fit. In arriving at that recommendation, the Probation Officer noted that the appellant had not utilised the 2 previous chances well.

When the appellant appeared before me, on his appeal, he begged for forgiveness. He said that he had learnt some courses whilst he was in prison. He said that if he was released, he would never commit any other criminal offence.

The appellant told the court that he had become saved, and would therefore avoid bad company, if released from prison.

Ms Maina, learned state counsel submitted that the conviction was sound, but the sentence appeared harsh. The sentence was one of four (4) years imprisonment.

The conduct of the appellant does not earn him any favour. He may be young in age, but he already has a terrible track record, with two (2) convictions under his belt.

Nonetheless, this court is still prepared to give him one more chance to prove to himself and to society that his life has changed for the better.

If the death of his accomplice and his stay in prison for over 2 years has not changed him, I think that nothing else will.

Accordingly, I do now, reluctantly, order that the sentence handed down by the trial court be varied, by being reduced to the period which the appellant has already served in jail. I therefore order that he be set at liberty forthwith unless he is otherwise lawfully held. However, the said release will be subject to his executing a Personal Bond to keep the peace, and to refrain from committing any criminal offence for the next twelve (12) months.

It is so ordered.

Dated, Signed and Delivered at Nairobi, this 29th day of November, 2012.

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FRED A. OCHIENG
JUDGE