



REPUBLIC OF KENYA

High Court at Eldoret

Criminal Appeal 77 of 2011

JAMES RIABA KAPRUTE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant James Riaba Kaprute was jointly charged with Emmanuel Siptal Epitet with stealing stock contrary to Section 278 of the Penal Code.

Particulars of the charge are that on the 20th day of January, 2011 at Cheplaskei II Farm in Uasin Gishu District within Rift Valley Province, jointly stole one he-goat valued at Kshs. 2,000/= the property of Elizabeth Chemweno.

The Appellant was named as the second accused person in the charge sheet. Both the Appellant and the first accused were convicted on their own plea of guilty. The first accused was discharged under Section 35 (2) of the Penal Code on condition that he remains a person of good conduct for the next two years. Unfortunately for the Appellant, he was sentenced to serve five (5) years in jail.

Being dissatisfied with the decision of the learned Magistrate has appealed to this Court against the sentence. He has listed the following grounds of appeal:-

1. THAT he pleaded guilty at the trial because he was cheated that he was going to be released by the court and police.
2. THAT he has a family composing of school going children who solely depend on him for substance hence his incarceration for a long period will be detrimental to their future.
3. THAT his mitigation before the trial Court before judgement was not considered by trial Magistrate.
4. THAT with the above mentioned grounds and others to be adduced during the hearing of the appeal he pleaded for leniency.

During the hearing he stated that he has already served two years, was remorseful, has children who wholly depend on him and continue to suffer due to his incarceration.

The learned State Counsel, Mr. Wainaina on the other hand opposed the appeal stating that the offence of stealing stock attracts a maximum sentence of seven (7) years and that Court had considered mitigating

factors before arriving at the penalty handed to the Appellant. It is now the duty of the Court to determine whether the sentence handed to the Appellant was justifiable given the offence he was charged with and circumstances of the case.

From the onset I would state that any sentence imposed on an accused person must be aimed at correcting the individual rather than punishing him. It should also be stern enough to be deterrent depending on the circumstances so that the offender does not repeat the commission of the offence. Courts must avoid imposing sentences that may harden the offender instead of correcting him.

Under S. 278 of the Penal Code, theft of stock attracts a penalty not exceeding fourteen (14) years. The leeway not to provide for a minimum sentence in so as to give courts room to consider among other things, the circumstances under which an offence was committed and the number of stock involved. In the instant case, only one goat was involved which would probably have costed Ksh. 4,000/= at market rate at that time. Imposing the sentence of five years to me does not sound reasonable and not commensurate with the facts and circumstances of the case.

Secondly, the court failed to take into account that the Appellant had pleaded guilty on the first date of appearance in Court. That, to me, is a mitigating factor that the learned Magistrate did not consider since the Appellant did not waste the Court's time through the hearing process.

Given the above observations it is only fair to reconsider the sentence imposed upon the Appellant. He was sentenced on 2nd February, 2011 and so he has already served approximately one year and eleven months. I hold that he has served sufficient sentence and need not continue with further sentence. He is a young man with a young family. He has learned his lessons while in jail and he should be bright enough to amend and look towards a reformed future.

In the result I compute the sentence to the period already served and so the appeal succeeds to the extent that he has served his jail term. I order that he be set free forthwith unless otherwise lawfully held.

DATED and DELIVERED at ELDORET this 20th day of December, 2012.

G. W. NGENYE - MACHARIA
JUDGE

In the presence of:

Appellant present in person

Mr. Wainaina for the State