



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 45 OF 2010

(From Original Conviction and Sentence in Criminal Case No. 985 of 2009 of the Principal Magistrate's Court at Kwale: A.M. Obura (Mrs.) R.M.

MICHAEL LUI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant **MICHAEL LUI** has filed this appeal challenging his conviction on a charge of **STEALING STOCK CONTRARY TO SECTION 278 OF THE PENAL CODE**. The particulars of the offence were that:-

“On diverse dates between 12th June 2009 and 5th July 2009 at Kizibe sub-location in Kwale District within the Coast Province, stole five goats valued at Kshs.6,500/- the property of NZAPHILA WATO CHIDZIWE”

The Appellant who was first arraigned before the learned Senior Resident Magistrate sitting at Kwale Law Courts entered a plea of **‘not guilty’** to the charge. The hearing was set for 19th October 2009. On that day the Appellant upon having the charges read out to him a second time changed his plea to **‘guilty’**. The matter was reserved until 6th November 2009 for facts to be read. On 11th November 2009 that date the learned court prosecutor did read out the facts as required by law. In response to these the Appellant maintained his plea of guilty by saying:-

“The facts are true. It is true I stole the complainants goats”

The trial court proceeded to convict the Appellant on his own plea of guilty in conformity with S. 207(2) of the Criminal Procedure Code. The court did allow the Appellant an opportunity to mitigate after which he was sentenced to serve five (5) years imprisonment. It is against this conviction and sentence that the Appellant now appeals.

MR. MUTETI learned State Counsel opposed the appeal. I have myself carefully perused the proceedings of the trial in the lower court. I am satisfied that the plea of guilty was unequivocal. The fact

that the Appellant fully comprehended the proceedings is evident by his active participation in the same. I note that in his written submissions duly filed in court the Appellant does not challenge his conviction at all. He only appeals against his sentence. I therefore confirm the conviction as rendered by the trial court.

With respect to sentence the Appellant was allowed an opportunity to mitigate. The trial magistrate did consider his mitigation. The maximum penalty given for this offence is 14 years. Even taking into account the fact that the Appellant pleaded guilty and the fact that he was a first offender I do find five the 5 year sentence meted out by the court to have been lawful, reasonable and appropriate in the circumstances. The trial court did note that the offence of stock theft was rampant in the area, thus a deterrent sentence was called for. I find no reason to interfere with the sentence imposed by the court and I do uphold the same. This appeal fails. The conviction and sentence of the lower court are hereby upheld and confirmed.

Dated and Delivered at Mombasa this 21st day of March 2011.

M. ODERO
JUDGE