



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 16 OF 2011

SHADRACK LANGAT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Shadrack Langat was charged with the offences of stealing stock contrary to **Section 278** of the **Penal Code** and being in possession of offensive weapon contrary to **Section 89(1)** of the **Penal Code**. He pleaded guilty, and was convicted on both counts. On the first count he was sentenced to serve 5 years imprisonment and on the 2nd charge he was discharged under **Section 35(a)** of the **Penal Code**. Being dissatisfied with the sentence meted on him, he filed this appeal. In his petition of appeal, all that is contained therein is mitigation as to why the court should reconsider the sentence and be lenient to him.

Mr. Omwega, counsel who appeared for the State opposed the appeal on the grounds that the sentence of 5 years is reasonable in the circumstance. The court considered his mitigation and discharged him in the 2nd count under **Section 35(a)** of the **Penal Code**; that **Section 278** of the provides for a maximum sentence of 14 years. The appellant having pleaded guilty was only given a sentence of 5 years and was discharged on the 2nd charge. This court notes that **Section 35(a)** of the **Penal Code** does not exist. The conditional discharge should have been under **Section 35(1)** of the **Penal Code**. So far the appellant has served 3 years upto February 2011. He is left with less than one year if he is granted remission. The appellant stole a bull and heifer. The heifer was recovered. This court will exercise its discretion and sentence the appellant to the term already served. The appeal against sentence is allowed to that extent and he is released from prison forthwith unless otherwise lawfully held.

DATED and DELIVERED this 8th April 2011.

R.P.V. WENDOH
JUDGE

PRESENT:

The appellant present – in person.
Mr. Omutelema for he accused.
Kennedy – Court Clerk.