



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO 49 OF 2010

JOHN KARIMI KANYIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

JOHN KARIMI KANYI was jointly charged with Daniel Maina Ndungu, for the offence of stealing Stock Contrary to section 278 of the Penal Code, in the alternative, John Karimi Kanyi was charged with handling stolen goods contrary to section 322 (2) of the Penal Code.

On 21st December 2009, John Karimi Kanyi, 1st accused was convicted on his own plea of guilty , and was sentenced to 7 years imprisonment. As regards the 2nd accused the case proceeded to full hearing and he was acquitted.

John Karimi Kanyi, the appellant herein, has appealed against sentence on the grounds that the same was harsh and excessive as he had pleaded to the offence. In support of his appeal he filed five grounds which are basically mitigation similar to what he said Lower Court. It seems he was convicted in another case which is not before me today and he wants the sentences to run concurrently, but that, this court cannot do because this case is not before me. Mr Omutelema, submitted that since what was stolen was a heifer worth Ksh16,000 the sentence was excessive in the circumstances .

I have read the record of appeal and I note that before sentence, the prosecutor produced the appellant's previous criminal records . He was earlier convicted for an offence of burglary and stealing in 2007 and 2008 he was convicted of an offence of stealing stock and was sentenced to one year imprisonment. The other offences in his previous records were not relevant to the charge he was facing. The trial Court took into account that he was a habitual offender before handing him 7 years imprisonment.

All that is contained in petition of appeal is mitigation similar to what the appellant told the trial court. At that time of sentence, he was serving another jail term. The appellant is a young man but he has been a habitual offender and taking into account what was stolen, I hereby set aside the sentence the seven(7) years imprisonment . Instead I sentence the appellant to four(4) years imprisonment and sentence will run from the date of sentence on 28th January 2010.

Orders accordingly.

DATED AND DELIVERED THIS 23RD DAY OF MAY 2011

**R.P.V WENDOH
JUDGE**

PRESENT

Appellant

CC: Kennedy Oguma