



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL APPEAL NO. 60 OF 2009

BETWEEN

ISAACK WASIKE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the decision of the Senior Resident Magistrate Hon. G. Mmasi dated 27th February, 2009

in Eldoret Chief Magistrate's Court Criminal Case No. 3666 of 2008)

JUDGMENT

The appellant was charged jointly with **George Luyai** (1st accused in the Lower Court) and **Caleb Barasa** (the 2nd accused), with the offence of stealing stock contrary to section 278 of the Penal Code. The allegation was that on 7th August, 2008, at Makutano Village, Sango Sub-Location, Kongoni in Lugari District within Western Province, the appellant and the said co-accused jointly stole one cow valued at Kshs. 25,000/- the property of **Aggrey Sabatia** hereinafter ("the complainant"). The trio faced an alternative count of handling stolen property contrary to section 322(2) of the Penal Code, the allegation being that on the same date at the same place otherwise than in the course of stealing, the trio received or detained one cow knowing or having reason to believe the same to be stolen property.

After pleading not guilty to the charge the trio were tried before **Mmasi**, a Senior Resident Magistrate. Whereas the co-accused persons were acquitted of the charge, the appellant was convicted and sentenced to serve five (5) years imprisonment on the principal count of stealing. Being aggrieved the appellant appealed to this court. There are however, no grounds of appeal in his petition of appeal.

At the hearing of the appeal the appellant represented himself as he did at the trial. He orally submitted that his appeal was against sentence only. He urged reduction of the prison sentence contending that he had now been trained and would earn a decent living if given a second chance. He reiterated that he has two children who are no under the care of his 68 year old mother.

Mr. Chirchir, the Learned Senior State Counsel appeared for the respondent state and opposed the appeal. In his view the sentence imposed upon the appellant is deserved given that the appellant sold a cow valued at Kshs. 25,000/- and sold it.

Having considered the submissions of both the appellant and counsel for the state, I take the following view of the mater. I can only interfere with the discretion of the learned trial magistrate as to the appropriateness of the sentence if it appears that the Learned trial magistrate acted on wrong principles in assessing the sentence or that she has imposed a sentence which is manifestly excessive.

The offence of stock theft carries a maximum sentence of fourteen (14) years imprisonment. The appellant was sentenced to only five (5) years, in the premises no.

There is valid ground of appeal against sentence. In the circumstances of this case the sentence of five (5) years imprisonment is not manifestly excessive. In my view the same was deserved.

In the result the appeal has no merit and is accordingly dismissed.

DATED AND DELIVERED AT ELDORET THIS 4TH DAY OF AUGUST, 2011

F. AZANGALALA
JUDGE

Read in the presence of :-

The Appellant and Mr. Kabaka for the State

F. AZANGALALA
JUDGE

4TH AUGUST, 2011