

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA**

Criminal Appeal 88 of 2008

**ALEX WAFULA BIKETI:.....APPELLANT
~VRS~
REPUBLIC:..... RESPONDENT
(Appeal from WBY SRM CR. NO.1320 of 2005)**

JUDGMENT

The Appellant Alex Wafula Biketi was convicted on his own plea of guilty of the offence of stealing stock contrary to section 278 of the Penal Code and sentenced to serve five (5) years imprisonment. In his petition of appeal, he pleads for lenient sentence. He states that he is a first offender, he is remorseful and if given another chance, he would not repeat a similar mistake. Basically, his appeal is only against sentence.

The appeal was opposed by the state on grounds that the Appellant pleaded guilty to the charge. He had a previous conviction where he was jailed for two years for a similar offence. Mrs. Leting for state submits that the sentence of five (5) years imposed by the court is reasonable.

After the conviction of the Appellant, the prosecutor informed the court that he had a previous similar conviction in criminal case no.1319 of 2005 where he was jailed for two years. The previous conviction was not and has not been denied by the Appellant. The maximum sentence under section 278 of the Penal Code is fourteen (14) years imprisonment. For a second offender, I find the sentence reasonable. It is neither harsh nor excessive. The accused gave his mitigation in the lower court that his father died and that he has a wife and five children. The magistrate considered this mitigation and gave him a reasonable sentence even with a similar previous conviction. The trial took one day because it was a plea of guilty. Since 2005 the Appellant is almost completing the sentence.

I find no reason to interfere with the sentence imposed. The appeal has no merit and I dismiss it accordingly.

**F. N. MUCHEMI
JUDGE**

Judgment dated and delivered on the 15th day of June 2010 in the presence of the Appellant and the state counsel Mr Ogoti