



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO. 196 OF 2009**

(From original conviction and sentence in Criminal Case No. 362 of 2009 of the Principal Magistrate’s Court at Nyahururu – T. Matheka {P. M.})

NJENGA KINYANJUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged on two counts of stealing stock contrary to section 278 of the Penal Code and an alternative charge of handling stolen goods contrary to section 322(2) of the Penal Code, (Cap. 63, Laws of Kenya), and a third count of failing to attend court contrary to section 121(1)(i) of the Penal Code.

The appellant pleaded guilty to three counts and was sentenced to serve four years in prison on Count I and one year on Count III both sentences to run consecutively. He was sentenced to 2 years on Count II to run concurrently with Count I.

Since the appellant pleaded guilty to the three counts, he can only appeal on the legality and extent of the sentence under section 348 of the Criminal Procedure Code.

Mr. Omutelema learned Provincial State Counsel, did not support the plea of guilty on Count III, on the offence of failure to attend court contrary to Section 121(1)(i) of the Penal Code. Counsel submitted that an accused person who is on bond or bail and fails to attend court on the scheduled day and offers no explanation for it, is liable to have his bond/bail cancelled and following which he is remanded in custody. He did not therefore support the conviction on plea of guilty to Count III of the charge – failure to attend court contrary to Section 121(1)(i) of the Penal Code.

The statement of facts read to the court by the prosecution after the appellant pleaded guilty to Count III of the charges suggested that the appellant was out on some free Police Bond (*there is no record he was granted bail by the court*), and he failed to attend court on 22nd October 2008. Following non-attendance, a warrant of arrest was issued and the appellant was found in Nakuru, and was taken back to Nyahururu where the offence was committed, and where the trial was also to take place.

I agree with learned Counsel for the State that a person who is granted bond/bail pending the hearing of his case and fails to attend court without reasonable excuse is liable to have a warrant of arrest

issued against him and thereafter cancellation of the bond/bail, and/or forfeiture of the security offered for the bail, all in terms of section 131 of the Criminal Procedure Code.

The offences created and described in Section 121(1) of the Penal Code refer to acts done or committed by an accused person in the course of proceedings and not in relation to his bail terms. It becomes both harsh and draconian to have the bond cancelled and in addition thereto be charged for non-attendance a proceeding which had not yet commenced knowing also that this is aailable offence.

I would therefore quash the conviction and sentence of the appellant on Count III on the grounds of illegality.

The punishment for stock-theft under Section 278 of the Penal Code is fourteen years. As the appellant was convicted on both counts on his own plea of guilty and was sentenced to four years on Count I and 2 years on Count II (*because the cow was recovered and returned to the owner*) and since Counts I and II were one transaction, and the appellant benefitted from the theft of the cow in Count I and kept the money in Count II, the Appellant was sentenced to 4 years on Count I, and 2 years on Count II and that both terms were to run consecutively.

The appellant has asked the court for mercy. He is landless, and pleads that he would not repeat the offences in future.

In exercise of the court's discretion under Section 354 (3)(b) I reduce the sentence on Counts I and II to 2 years, and the same to run concurrently from the time of first conviction.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 30th day of September, 2010

M. J. ANYARA EMUKULE
JUDGE