



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Criminal Appeal 92 of 2009

JAMIN WEPUKHULU NABIFWO APPELLANT

~VRS~

REPUBLIC..... RESPONDENT

JUDGMENT

The Appellant Jamin Wepukhulu Nabifwo was charged and convicted on his own plea of guilty of two offences by Sirisia Resident Magistrate. He was sentenced to serve five years imprisonment for stock theft contrary to section 278 of the Penal Code and one year for being unlawfully present in Kenya contrary to section 13 (2) of the Immigration Act.

In his petition of appeal the Appellant states that he was tortured by police and forced to admit the offence of stock theft which he did not commit. He claims that the magistrate did not warn him of the danger of pleading guilty and ignored his mitigation. Finally, the Appellant claims that the sentence is harsh and excessive.

Mr. Sichangi argued only two grounds of appeal. He submitted that the circumstances of the offence were not very clear. This is in regard to which offence the Appellant had committed. The sentences were harsh and excessive. The Appellant ought to have been repatriated to his country because he was a foreigner. Mr. Sichangi asked the court to review the sentences.

The appeal was opposed by the state. The State Counsel said the accused pleaded guilty to the charges and did not complain of torture. The mitigation was considered and did not affect the sentences which were reasonable. It is only the order of repatriation that should be ordered.

The record shows that the charges were read in Kiswahili which language the Appellant understood. In his petition, the Appellant does not complain about the language. It therefore follows that he understood the charges well and pleaded guilty. The facts were read to him and he admitted them. The plea was therefore unequivocal. The Appellant did not complain of having been tortured by the police when he appeared in court for plea.

The sentence of five years for stock theft was reasonable since the maximum under the section is fourteen (14) years imprisonment. Section 13 (2) of the Immigration Act gives the sentence as a fine not exceeding Ksh.20,000/= or to imprisonment for a term not exceeding one (1) year or both. Although the Appellant is a foreigner, he ought to serve the sentence imposed within the country of conviction. I hereby dismiss the appeal for lack of merit and uphold the conviction and sentences.

The Appellant will be repatriated on completion of the five (5) year sentence. The Deputy Registrar to facilitate the

process of repatriation by executing the necessary documents.

F. N. MUCHEMI

JUDGE

Judgment delivered and dated this 19th day of October, 2010 in the presence of the Appellant, his counsel Mr. Sichangi and the State Counsel Mrs. Leting.

F. N. MUCHEMI

JUDGE