

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 39 of 2006

JACKSON NDUNGU WANJIRU APPELLANT

VERSUS

REPUBLIC.....

RESPONDENT

(Being an appeal from the conviction and sentence of R.A.A. OTIENO Senior Resident

Magistrate in Chief Magistrate's Criminal Case No. 180 of 2006 at Nyeri)

JUDGMENT

JACKSON NDUNGU WANJIRU hereinafter referred to as “*the Appellant*” was charged with one count of stealing stock contrary to section 278 of the Penal Code. When arraigned in court on 18th November, 2004, the Appellant entered a plea of not guilty and his trial was scheduled for 31st January, 2006. However when the case next came up for mention on 26th January, 2006 the appellant changed his plea to one of guilty and was accordingly convicted. Upon conviction on his own plea of guilty, the appellant was sentenced to 7 years imprisonment.

The appellant was aggrieved by the sentence and hence lodged the instant appeal limited to sentence only. When the appeal came up for hearing, the appellant in support thereof stated that he pleaded guilty to the charge, that the sentence imposed was harsh and excessive and that four years imprisonment would have met the ends to justice in this case.

In response, Mr. Orinda learned Senior Principal State Counsel opted to leave the matter to the discretion of the court.

Sentencing is a matter for the discretion of the trial court. The discretion must, however, be exercised judicially. The trial court must be guided by evidence and sound legal principles. It must take into account all relevant factors and eschew all extraneous factors. The appellate court may however interfere with the discretion of the sentencing court if it is shown that the sentence imposed is illegal, harsh and excessive, that the trial court acted upon wrong principle, took into account immaterial factors and overlooked some material factors. See generally *WANJEMA VS REPUBLIC [1971] E.A. 493*.

In the instant case the offence for which the appellant was prosecuted carries a maximum sentence of 14 years imprisonment. However the appellant was sentenced to half the term aforesaid. The sentence imposed was thus legal. Nothing has been brought to my attention that would suggest that in arriving at the sentence aforesaid, the learned magistrate took irrelevant consideration into account and or failed to put into account relevant considerations. Is the sentence imposed manifestly harsh and excessive? It does appear to me to be so taking into account all the circumstances of the case. The appellant was a first offender, he pleaded guilty to the charge and thereby saved the court its valuable judicial time. The stolen sheep too was recovered and handed over to the owner, the complainant thereby substantially mitigating his loss. Taking all the foregoing into account, the sentence imposed was no doubt manifestly harsh and excessive. The appellant is of the view that a prison term of 4 years imprisonment would have met the justice of the case. I agree. Accordingly the appeal on sentence succeeds to the extent that the appellant

shall now serve 4 years imprisonment with effect from the date of conviction and sentence, that is to say 31st January 2006.

Dated and delivered at Nyeri this 29th day of January 2009.

M.S.A. MAKHANDIA

JUDGE