



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL 289 OF 2008**

**ROBERT GITHAMBO WACHIRA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant, **Robert Githambo Wachira** was, together with one **Peter Muhia Kamau**, charged with the offence of **stealing stock** contrary to **section 278(1) of the Penal Code**. On 12<sup>th</sup> July 2007 he pleaded guilty to the charge and was convicted. He was sentenced to serve five (5) years imprisonment.

He filed this appeal challenging the sentence passed against him on the grounds that the same is harsh and excessive and complains that he was not warned of the consequences of the plea of guilty when asked to plead to the charge. He also states as another ground of appeal that the learned trial magistrate did not consider his hitherto good character when sentencing him.

The facts of the case the correctness of which the appellant admitted were that, on the 30<sup>th</sup> June, 2007 at about 7.00 p.m. the complainant, Stephen Gioche Kamau securely locked his calf, valued at Kshs 7,000/= for the night. In the morning the complainant found that the calf had been stolen. He reported the matter to the Area Chief who, with the assistance of some administration police officers followed footprints that led to Peter Muhia Kamau's house where the calf was found.

Peter Muhia Kamau was arrested. He told the officers and the Chief that he had stolen the calf with the appellant and led the search party to the appellant's home where he too was arrested in connection with the theft of the calf and charged at the Kipipiri Police Station.

When sentencing the appellant the learned trial magistrate considered him to be a first offender, contrary to what he now says in his appeal. The appellant did not mitigate the offence despite being accorded the opportunity to do so.

At the taking of the plea, the subordinate court is required to state the substance of the charge to the accused person, explaining all the ingredients of the charge. It is not duty bound nor is it required to explain to the accused person the consequences of the plea taken. The appellant's complaint on this ground cannot, in my, view stand.

As regards the sentence the trial court appears to have exercised some degree of leniency in sentencing the appellant to five years whereas the law prescribes a maximum sentence of fourteen (14) years for the subject offence. However, considering that the stolen calf was recovered and I presume restored to the owner I am inclined to find that the recovery ought to have been considered and a lesser jail term passed.

In the premises I allow the appeal on this ground and hereby substitute the five year jail term with one of three (3) years. Accordingly I reduce the sentence to three (3) years and direct that the period already served be considered in the computation thereof.

**Dated, signed and delivered at Nakuru this 11<sup>th</sup> day of June 2009**

**M. G. MUGO**

**JUDGE**