



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL 213 OF 2007**

**(From original conviction and sentence in Criminal Case No. 998 of 2007 of the Resident Magistrate's Court at Eldama Ravine – {D. M. Machage – R. M.})**

**CHRISTOPHER RUTTO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with the offence of **stealing stock** contrary to **section 278 of the Penal code**. The particulars of the charge were that on 18<sup>th</sup> September 2007 at Mori Village in Koibatek District of the Rift Valley Province he stole one sheep, valued at Kshs 1,500/= the property of Loise Chebwaot.

The appellant pleaded guilty at the taking of the plea and admitted the facts stated to him by the prosecution as having been true. He was convicted on the plea and sentenced to serve 4 years imprisonment. He preferred the present appeal under a Petition of Appeal filed on 24<sup>th</sup> October 2007 citing the following grounds:

- 1. That he is remorseful of the offence committed.***
- 2. That he is a first offender.***
- 3. That the court considers a reduction of the sentence which in the appellant's view, is excessive.***
- 4. That the court grants him pardon and mercy.***
- 5. That he promises never again to enter into conflict with the law.***
- 6. That this honourable court exercises prerogative of mercy and give him a lenient sentence."***

At the hearing of the appeal the State conceded the same on the ground that the plea was taken in a language that the appellant did not understand, given that the trial court record only shows that English and Kiswahili were used, without specifying which of the two languages the appellant understood.

With due respect to the State, I am not inclined to accept this submission as a ground to allow the appeal. The nature of the appeal clearly demonstrates that the appellant understood the proceedings of the trial court, hence his decision to appeal merely against the sentence without challenging the conviction.

The charge under **Section 278 of the Penal Code** attracts a maximum sentence of 14 years. That being the case, a sentence of 4 years imprisonment cannot be said to be excessive. However, sentencing is a matter of discretion and this court is vested with power to reduce a sentence where reasonable grounds are shown. I have noted that the appellant is remorseful and undertakes not to offend the law once released. He has however lied that he was a first offender when convicted in this case. The record shows that he had a previous conviction on a house breaking charge and that he committed the later offence while serving a committal order. In those circumstances I am not persuaded that the sentence herein should be interfered with. The appellant should complete his term both for his correction and rehabilitation.

The appeal is hereby dismissed.

**Dated signed and delivered at Nakuru this 8<sup>th</sup> day of October, 2009**

**M. G. MUGO**

**JUDGE**