

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 132 of 2007

RUA MWARUWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Rua Mwaruwa, was charged with stealing stock contrary to section 278 of the Penal Code. The particulars were that on the night of 4th and 5th August 2007 at an unknown time at Miatsani village, Mwaluphamba Location, within Kwale District of Coast Province, the appellant stole one bull, one cow and one bullock all valued at Kshs. 33,000/= the property of Munga Ndegwa Chimera.

The appellant appeared before Hon. Ogembo, then a Senior Resident Magistrate, on 13th August 2007 and pleaded guilty to the charge. The prosecutor stated the facts of the case and when the appellant was invited to react to the same, he said that “the facts are correct” whereupon he was convicted on his own plea of guilty. The prosecutor then informed the Learned Senior Resident Magistrate that the appellant was a first offender. In mitigation the appellant stated that he had two children and asked for leniency adding that he would not repeat the offence. The Learned Senior Resident Magistrate after considering the appellant’s mitigation observed that the offence was serious and required a stiff sentence. He then sentenced the appellant to serve five (5) years imprisonment.

The appellant was dissatisfied with the sentence and has appealed to this court against the same on the main ground that the said sentence is manifestly excessive in the circumstances. He reiterates that he has acknowledged his sin and will never commit the offence again. He further states that he is now 51 years of age and has a wife and seven children some of whom are at school. He also has an old grandmother who looks to him as the breadwinner.

Mr. Onserio, Learned State Counsel does not support the sentence imposed upon the appellant. I agree. The Learned Senior Resident Magistrate does not seem to have fully appreciated the mitigating circumstances of the appellant. The appellant was a first offender and pleaded guilty. He was remorseful and repeats the same before this court. The three head of cattle that were stolen from the complainant were all recovered. The appellant says he is aged 51 years and is the breadwinner for his family which includes an aged grandmother. In the premises, it is my view that the sentence of five years imprisonment is manifestly excessive. I am therefore inclined to interfere with the sentence imposed upon the appellant. The appeal against sentence accordingly succeeds. The sentence of five (5) years is set aside and substituted with a sentence of imprisonment for the period already served. The appellant should be released forthwith unless he is otherwise lawfully held.

DATED AND DELIVERED AT MOMBASA THIS 25TH DAY OF MAY 2009.

F. AZANGALALA

JUDGE

Read and delivered in open court in the presence of the Appellant and the Learned State Counsel Mr. Onserio.

F. AZANGALALA

JUDGE

25TH MAY 2009