

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 37 of 2005

[From the original conviction and sentence in Criminal Case No. 608 of 2004 Chief

Magistrate's Court, Nakuru – J. NDUNA (S.R.M)]

WILSON KIMUTAI KORIR APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant *Wilson Kimutai Korir* was charged with the offence of stealing stock contrary to Section 278 of the Penal Code.

The particulars of the charge stated that on 13th a day of March 2004 at Teret Farm in Nakuru District within Rift Valley Province he stole one cow valued at Kshs.8,000/- the property of ***Catherine Cheron Kitaa***.

The appellant was convicted on his own plea of guilty and he was sentenced to seven years imprisonment. The appellant has appealed against the sentence, and during the hearing of his appeal, the appellant urged this court to consider reducing the sentence imposed on him. He pleaded that he had reformed since he has been in incarceration from March 2004. He also pleaded for leniency and stated that he has suffered while in Prison. The appellant also drew the attention to the court to the mitigation he offered before the lower court where he sought forgiveness since the cow he had stolen was also recovered.

This appeal was opposed by the learned State Counsel, ***Mr. Mugambi*** for the State. He submitted that the appellant was convicted on his own plea of guilty. The sentence passed against the appellant is lenient considering that the law provides for a maximum of fourteen (14) years.

I have taken into account the totality of the evidence and the submissions by the State. It is clear from the records that the appellant pleaded guilty to the charge and the sentence is in accordance with the provisions of the law. Bearing in mind the mitigation offered by the appellant and his further submissions before this court where he has pleaded for leniency on account of the fact that he has learnt his mistakes and promises to lead a meaningful life, am satisfied this court should consider reducing the sentence imposed by the lower court. I have also taken into account one of the principle purpose of custodial sentence is to rehabilitate the offender.

I have considered in addition to the above that the appellant has almost served a term of three years out of the seven years imposed on him. I have also taken note of the fact that the stolen cow was recovered. This court therefore should give a chance to the appellant to demonstrate that he has fully reformed by reducing or commuting the sentence of seven years to the period already served.

The appeal on sentence is hereby allowed and the appellant is set at liberty unless otherwise lawfully held.

It is so ordered.

Judgment read and signed on 9th February 2007.

MARTHA KOOME

JUDGE