



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Criminal Appeal 28 of 2006**

**(Being an appeal from conviction and sentence in Eldoret CMCR.C. 7729/2005 by the Senior Resident Magistrate M.K.N Nyakundi on 14/3/2006)**

**GEORGE ONYANGO OHENE ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 104 OF 2006**

**(Being an appeal arising from the Judgment of the Senior Resident Magistrate M.K.N Nyakundi in Eldoret CMCR.C. 7729 of 2005 delivered on 15/11/2006)**

**JOEL MWANGI NJUGUNA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

The two Appellants herein were charged before the Chief Magistrate's Court at Eldoret in Criminal Case No. 7729 of 2005 with the offence of stealing stock contrary to Section 278 of the Penal Code. The Charge read as follows:-

“(1) JOEL MWANGI NJUGUNA (2) GEORGE ONYANGO OHENE, on the 12<sup>th</sup> day of November, 2005 at JOYLAND ACADEMY in Uasin Gishu District within the Rift Valley Province stole two goats valued at Kshs. 3,000/=, the property of JOSEPHINE NGETICH.”

The two were arraigned in Court on 15<sup>th</sup> November, 2005. When the charges and facts were read to them, they both pleaded guilty. However, the First Accused, Joel Mwangi Njuguna who is the Second Appellant, did not unequivocally accept the facts as read out. As a result, the Learned Magistrate entered

a plea of not guilty in respect of him.

With regard to the Second Accused, who is the First Appellant herein, the Court convicted him and sentenced him to seven (7) years imprisonment.

On the 14<sup>th</sup> March, 2006, the First Accused applied to change his plea. The charge was read over to him and he pleaded guilty. The Learned Magistrate convicted him and sentenced to seven (7) years imprisonment.

The Second Accused lodged his Appeal on 18<sup>th</sup> December, 2006 challenging the sentence only. The First Accused also being aggrieved with the sentence lodged his appeal on 21<sup>st</sup> March, 2006. Both appeals were subsequently admitted to hearing and on the 1<sup>st</sup> February, 2007 they were consolidated and heard together.

At the hearing, the Respondent, the State did not oppose the appeals. Ms. Oundo, Senior State Counsel, conceded that the sentence handed to the First Appellant, George Onyango Ohene was harsh and excessive keeping in mind the value of the goats stolen and the fact that the animals were recovered.

As regards the Second Appellant, Joel Mwangi Njuguna, Counsel referred the Court to the record and pointed out that when the charge was read out to the accused the second time, he pleaded guilty. However, the facts were not read out to him. The Prosecutor stated:-

“I will be adopting the facts that I read on the date of the plea of the First Accused person.”

The Court proceeded to convict and sentence him on this basis. Counsel further admitted that this irregularity rendered the entire conviction and sentence fatal.

I have considered the Appeals herein and the submissions by the First Appellant and Counsel for the Respondent. I agree with Counsel for the State that the sentence of seven (7) years for the offence was harsh and excessive. The two goats were valued at Shs. 3,000/= but they were recovered. The First Appellant was arrested on 12<sup>th</sup> November, 2005. He remained in custody until conviction. He has been in custody for a period of one (1) year and 2 months.

I have also taken into account the age of the said appellant who is apparently still a young man. The First Appellant pleaded guilty on the same day he was charged. He appears like a person who is capable of being rehabilitated and serve as a useful member of the society. In the premises I do hereby set aside and quash the sentence by the trial Magistrate and substitute it with a sentence of fourteen months imprisonment with effect from the date of conviction. Having fully served the said sentence, it is hereby ordered that the First Appellant shall be released forthwith unless otherwise lawfully held.

With regard to the Second Appellant, after he pleaded guilty, it is clear that the prosecution did not read out or outline to the Court the facts upon which the charge was founded. Section 207 (2) provides as follows:-

“(2) If the accused person admits the truth of the charge his admission shall be recorded as clearly as possible in the words used by him, and the Court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making an order the Court may permit or require the Complainant to outline to the Court the facts upon which the charge is founded.”

While this proviso appears not to be strictly mandatory, yet once the Court permits or requires the Complainant to outline to the Court the facts, it is my view that, the said facts must clearly and fully read out or outlined to the Court. It has become an established practice for the accused to be asked whether he/she accepts or agrees with the facts as outlined. Conviction would thereafter follow if he confirms the

correctness of the facts. If he/she does not accept the facts as outlined, Court's always deem that the plea of guilty is rendered unequivocal and the plea is immediately changed to that of not guilty. I hold that the said procedure is a requirement of the law and confers rights to the Accused.

Since the facts were not outlined and the Prosecutor purportedly tried to do so by reference to the facts read out to the First Appellant at the earlier stage, the conviction of the Second Appellant was irregular, defective and invalid.

Accordingly, I do hereby set aside the conviction of the Second Appellant and quash the sentence meted out to him. The Second Appellant is hereby ordered to be released forthwith unless otherwise lawfully held.

DATED AND DELIVERED AT ELDORET ON 7<sup>TH</sup> DAY OF FEBRURARY 2007.

M. K. IBRAHIM

JUDGE