



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 312 of 2006

(From original conviction and sentence of the Resident Magistrate's Court at Maralal in Criminal Case No. 25 of 2006 – S.MBUNGI [S.R.M.]

KAWEL LENKAPATI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Kawel Lenkapati was charged with the offence of stealing stock contrary to Section 278 of the Penal Code. The particulars of the offence were that on the 26<sup>th</sup> January 2006 at Nomotio area in Samburu District, the accused stole one sheep valued at Ksh.1000/=, the property of Pawela Lengonguyo. When the appellant was arraigned before the trial magistrate, he pleaded not guilty to the charge. After a full trial, he was found guilty as charged and duly convicted. He was sentenced to serve seven years imprisonment. The appellant was aggrieved by his conviction and sentence, and has appealed to this court.

Although the appellant had appealed against his conviction in his petition of appeal, at the hearing of the appeal, he abandoned his appeal against conviction and pleaded with this court to consider reviewing the custodial sentence that was imposed upon him. He stated that he had become sick since his incarceration and at the moment he was undergoing treatment for tuberculosis (T.B). He told the court that he was the sole breadwinner of his family. He had sufficiently been punished for the offence that he had committed. He told the court that he had slaughtered the sheep of the complainant because at the time he was drunk and hungry. He pleaded with the court to be lenient on him. Mr. Mugambi for the State left the issue of sentence to the court.

I have also considered the plea for reduction of sentence made by the appellant. The Court of Appeal in **Samuel Githua Njoroge vs Republic CA Criminal Appeal No.53 of 2006 (Nakuru) (Unreported)** held at page 2 as follows;

***“The principles upon which an appellate court can interfere with the discretion of a trial [Magistrate] as regards sentence are well settled. The appellate court can only interfere where the trial [Magistrate] in assessing the sentence has acted on wrong principles or imposed a sentence which is manifestly inadequate or manifestly excessive. (See Diego vs Republic [1985] KLR 621.”***

In the present appeal, the appellant was convicted for stealing a sheep worth Ksh.1000/=. The appellant was sentenced to serve seven years imprisonment on the 29<sup>th</sup> March 2006. He has already served approximately one and half years of the said sentence. It is the view of this court that the appellant has sufficiently been punished for the offence that he committed. The appellant appears remorseful. He is suffering from tuberculosis. He has learnt his lesson. In the circumstances of this case therefore this court has looked favourably to his plea for reduction of sentence.

The appellant's appeal on sentence therefore succeeds. The sentence by the trial magistrate is hereby set aside and substituted by a sentence of this court commuting the sentence of the appellant to the period

already served. The appellant is ordered set at liberty and released from prison unless otherwise lawfully held.

It is so ordered.

**DATED at Nakuru this 31<sup>st</sup> day of October, 2007**

**L. KIMARU**

**JUDGE**