

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 294 of 2006

OMAINA LEKULA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Omaina Lekula 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 15th November 2005, at Kisima in Samburu District, the appellant stole two herds of cattle, the property of Legii Lekitashara. When the appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After a full trial, he was convicted as charged and sentenced to serve seven years imprisonment. The appellant was aggrieved by his conviction and sentence and duly filed an appeal to this court.

Although the appellant raised several grounds of appeal challenging his conviction and sentence, at the hearing of the appeal, the appellant abandoned his appeal against conviction and instead pleaded to the court to reduce his sentence. He told the court that he had suffered while in prison. He stated that he was the sole bread winner of his family and his incarceration had made his family suffer hardship. He told the court that his father died leaving his mother to depend on him. He was remorseful and urged this court to exercise leniency on him. Mr. Mugambi for the State, left the issue of sentence to the discretion of the court.

I have considered the plea by the appellant for reduction of sentence. Mr. Mugambi for the State left the issue of sentence to the discretion of the court. 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 found guilty of stealing stock. He admitted that he sold one of the cows which he had stolen. He has pleaded with the court to exercise leniency on him. The appellant has not complained that the trial magistrate wrongly exercised his discretion when he sentenced him. He pleaded with the court to consider that he had suffered while in prison. He also pleaded with the court to consider that he was the sole bread winner of his family and also the fact that his incarceration had caused hardship to his family.

I have considered the plea of leniency by the appellant and the period the appellant has been in prison. The appellant was sentence to serve the custodial sentence on the 13th February 2006. The appellant has been in prison for a period of one year and nine months. Taking into considerations the value of the stolen property, this court is of the view that the appellant has been sufficiently punished. He appeared remorseful when he made his plea for reduction of sentence. I will therefore allow his appeal on sentence and set aside the sentence of the trial magistrate and substitute it with 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.

DATED at NAKURU this 16th day of November 2007

L. KIMARU

JUDGE