

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Appeal 43 of 2006

HILARY KIPROTICH CHERUIYOT.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Hillary Kiprotich Cheruiyot was charged with another, with the offence of stealing stock contrary to section 278 of the Penal Code. The particulars of the offence were that on the night of the 17th and the 18th January 2006 at Cheptalal village in Bureti district, the appellant stole one Friesian cow valued at KShs. 25,000/= the property of Daniel Laboso. When the appellant was arraigned before the trial magistrate, he pleaded not guilty to the charge. Later, when the trial commenced, the appellant changed his plea. He pleaded guilty to the charge. He was sentenced to serve 42 months (*3years and 6 months*) imprisonment. The appellant was aggrieved by his conviction and sentence and has appealed to this court.

At the hearing of the appeal, the appellant abandoned his appeal on conviction. He instead pleaded with the court for a reduction of custodial sentence. He submitted that he was a primary school going pupil and was at standard seven (7) at the time he committed the offence. He told the court that he had committed the offence on account of poverty. He was remorseful and would not repeat the offence if he is released. He pleaded with the court to exercise leniency on him. Mr. Koech for the State opposed the appeal. He submitted that the sentence imposed upon the appellant was lawful. He stated that the appellant should serve the remaining part of the sentence to enable him to be fully rehabilitated into the society. He urged the court to dismiss the appeal.

I have considered the plea for reduction of sentence by the appellant and the objection made thereto by Mr. Koech on behalf of the State. The principles to be considered by this court in determining whether or not to reduce the sentence imposed by the trial court on an appellant are well settled. An appellate court will not interfere with a sentence of a trial court unless it is established that the trial court took into consideration irrelevant factors or failed to take into consideration relevant factors before it arrived at its decision on sentence. In sentencing an accused person, a trial court is exercising judicial discretion. That discretion can only be interfered with by an appellate court if it is established that the trial court sentenced a convict to serve an illegal sentence. In the present appeal, the appellant has made no allegation impeaching the exercise of discretion by the trial magistrate. In fact, the appellant has not complained that the trial magistrate failed to take into account relevant factors when he was sentenced to serve the said period in prison.

In the present appeal, the appellant is a young man. He is a first offender. He admitted the offence when he was arraigned before the trial Magistrate's court. He told the court that he was remorseful and had learnt his lesson in the period that he had been in prison. He promised that he would not re-offend if he is released from prison custody. I have noted that the appellant has served one year and two months of the sentence that was imposed on him. I think the period that the appellant has served in prison is sufficient punishment for him. The appellant has learnt that crime does not pay. This court is prepared to give him a second chance. If the appellant is wise, then he should take the opportunity now availed to him by the court and return to school and complete his primary school education. He has promised that he would not commit crime again.

For the reasons stated, the sentence imposed by the trial magistrate, although lawful, is hereby set aside and substituted by a sentence of this court commuting the sentence imposed upon the appellant by the trial magistrate 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 **KERICHO** this 6th day of **NOVEMBER 2007**.

L. KIMARU

JUDGE.