

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 187 of 2006

JOSEPH LEKURI LENAINA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence of the Senior Principal Magistrate's Court at Naivasha in Criminal Case No. 1914 of 2006 [J. G. Kingori {P.M.})

JUDGMENT

The appellant, Joseph Lekuri Lenaina was charged with two others 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 27th July 2006 at Kagunda village in Nakuru District, the appellant with his accomplices stole one cow valued at Ksh.18,000/=, the property of Ngugi Ngoya Ngethe. The appellant was alternatively charged with the offence **handling stolen goods contrary to Section 322(1)** of the **Penal Code**. The particulars of the offence were that on the same day and in the same place, the appellant jointly with his accomplices, otherwise than in the course of stealing, dishonestly handled one cow the property of Ngugi Ngoya Ngethe knowing or having reason to believe the said cow to have been stolen or unlawfully obtained. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to the main count. He was convicted on his own plea of guilty and sentenced to serve seven years imprisonment. The appellant was aggrieved by his sentence and appealed to this court.

In his petition of appeal, the appellant stated that he was remorseful, had learnt his lesson, and would not repeat the offence if he is released. He pleaded with the court to consider reducing the term of imprisonment that was imposed upon him by the trial magistrate. At the hearing of the appeal, the appellant reiterated his grounds of appeal and pleaded with the court to treat him with leniency. Mr. Mugambi for the State conceded to the appeal on the grounds that the language in which the plea of guilty was recorded was not stated by the trial court. I have read the record of the trial magistrate. The language in which the plea was taken was stated in the proceedings. It was stated that the plea was taken in Kiswahili and translated to English. Mr. Mugambi misapprehended the proceedings when he conceded to the appeal. I will therefore determine this appeal on its merit.

The appellant is not appealing against conviction. He is appealing against sentence. He pleaded guilty to the charge when he was arraigned before the trial magistrate's court. He was however dissatisfied with the custodial sentence that was imposed by the trial magistrate. He has pleaded for this court to exercise leniency on him. The principles to be considered by this court when determining whether or not to interfere with the exercise of discretion by the trial magistrate when sentencing a convict, are well settled. 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 of stealing stock. He admitted that he stole one cow valued at Ksh.18,000/=. He was a first offender. He is remorseful. He told the court that he had learnt his lesson for the period that he has been in prison. The appellant was sentenced to serve seven years imprisonment on the 31st July 2006. Although the sentence was lawful, in the circumstances of this case, this court is of the opinion that the sentence was excessive, taking into consideration the value of the stolen item. The trial magistrate did not take into account that the stolen cow was recovered and returned to the complainant. He further failed to take into account that the appellant was a first offender. In the circumstances of this case, I do find that the plea for reduction of sentence by the appellant has merit.

I will therefore allow the appeal. I will set aside the sentence of the trial magistrate and substitute it with an appropriate sentence of this court. I commute the sentence of the appellant to the period already served. The appellant is ordered released from prison forthwith and set at liberty unless otherwise lawfully held.

DATED at NAKURU this 14th day of December 2007

L. KIMARU

JUDGE