

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL APPEAL 172 OF 2006

STEPHEN KIPNGENO LANGAT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence of the Senior Resident Magistrate's Court at Molo in Criminal Case No. 2792 of 2004 [R. Sagero {DM II PROF.]

JUDGMENT

The appellant, Stephen Kipngeno Langat 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 21st October 2004, at Cheres village in Kericho District, the appellant stole five sheep valued at Ksh.10,000/=, the property of Paul Tonui. The appellant was alternatively charged with the offence of **killing an animal with intent to steal its carcass contrary to Section 289** of the **Penal Code**. The particulars of the offence were that on the 23rd October 2004 at Miti Tatu village in Kericho District, the appellant killed an animal capable of being stolen, namely one sheep, with the intent to steal the carcass. The appellant pleaded guilty to the main charge and was convicted on his own plea of guilty. He was sentenced to serve seven years imprisonment. The appellant was aggrieved by his sentence and has appealed to this court.

In his petition of appeal, the appellant raised several grounds of appeal basically pleading for leniency from the court. He stated that he was remorseful and asked the court to consider reducing the custodial sentence that was imposed upon him, which in his opinion was excessive in the circumstances. At the hearing of the appeal, the appellant reiterated the contents of his petition of appeal. He submitted that during the period that he had been in prison, he had learnt a trade and was fully rehabilitated. He was therefore ready to rejoin the society as a useful and law abiding member. He told the court that he had sat for his Kenya Certificate of Primary Education this year. He pleaded with the court to put into consideration that he was the sole breadwinner of his family. Mr. Mugambi for the State left the issue of sentence to the court.

The appellant is not appealing against conviction. He is appealing against sentence. He has pleaded with the court to order a reduction of the custodial sentence that was imposed upon him by the trial magistrate. 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 the sheep of the complainant. He was sentenced on the 10th January 2005 to serve seven years imprisonment. The appellant was aggrieved by the sentence. He has pleaded with the court to exercise leniency on him and

order a reduction of sentence. Although the sentence that was imposed by the trial magistrate was legal, I have considered the circumstances of this case and I am of the view that the said sentence was excessive. The trial magistrate did not take into account that the appellant was a first offender. I have also considered the fact that the appellant appears to have reformed in the period that he has been in prison. He has learnt a trade. He has improved his academic credentials. He sat for his Kenya Certificate of Primary Education. He has already served nearly three years of the sentence that was imposed upon him by the trial magistrate. This court is of the view that the appellant has been sufficiently punished.

I will allow his 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. He is ordered released from prison and set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

DATED at NAKURU this 14th day of December 2007

L. KIMARU

JUDGE