



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appeal 96 of 2004**

**(From original conviction(s) and Sentence(s) in Criminal Case No. 911 of 2003**

**of the Senior Resident Magistrate’s Court at Garissa (J.G. King’ori – SRM)**

**RASHID BURALE NOOR.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

**RASHID BURALE NOOR** pleaded guilty to **STOCK THEFT** contrary to **Section 278** of the **Penal Code**. He was sentenced to 7 years imprisonment. He lodged his appeal against sentence alone saying that he was remorseful for the offence and sought the courts leniency.

**MISS NYAMOSI** learned counsel for the State did not oppose the appeal. Learned counsel submitted that the trial magistrate misdirected himself in law when he found that the offence carried a minimum sentence of 7 years. The learned counsel submitted that for the theft of 2 goats, seven years imprisonment was excessive.

I have carefully considered this appeal. The learned trial magistrate made the following observations before sentencing the Appellant.

**“Sentence**

***Accused has pleaded guilty to the charge and is treated as a first offender. Offence is extremely notorious and provides for a minimum sentence and maximum sentence of 7 and 14 years imprisonment with hard labour. In view of the accused’s record and mitigation, the court will impose the minimum sentence. Accordingly the accused is sentenced to serve 7 years imprisonment with hard labour.”***

The minimum sentence of 7 years imprisonment for this offence was removed by **Act No. 22 of 1987**. The section now provides that a person convicted under this section is liable to imprisonment for a period not exceeding 14 years. The learned trial magistrate therefore misdirected himself on a point of law and consequently imposed a harsh and excessive sentence in the circumstances.

I have considered that the Appellant is a family man, had pleaded guilty to the charge saving courts’ time and was a first offender. I have also considered that he is remorseful and has sought for leniency, I will set aside the sentence of 7 years imprisonment and in substitution thereof order that the Appellant

serve 3 years imprisonment from the date of sentence in the lower court (9<sup>th</sup> December 2003).

Dated at Nairobi this 5<sup>th</sup> day of April 2006.

**LESIIT. J.**

**JUDGE**

Read, signed and delivered in the presence of;

Appellant present

Miss Nyamosi for State

Huka CC

**LESIIT. J.**

**JUDGE**