



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA**

Criminal Appeal 5 & 6 Of 2005

KAZUNGU CHARO.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 6 OF 2005

(From original sentence and in Criminal Case No. 922 of 2004 of the Resident Magistrate’s Court at Kaloleni).

ROBERT CHARO KAZUNGUAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

J U D G M E N T

Kazungu Charo and Robert Charo Kazungu, the appellants herein, pleaded guilty to a charge of stealing stock contrary to Section 278 of the Penal code. They were then convicted and each sentenced to 4 years imprisonment. Being dissatisfied they each filed an appeal against sentence. The appeals were consolidated at the instance of the learned State Counsel with the approval of the appellants.

On appeal, the appellants raised four similar grounds of appeal which may be reproduced as follows:

- (i) That the sentence of 4 years imprisonment is harsh and excessive.
- (ii) That the trial court did not take into account the fact that they were 18 years hence they should have been given a lesser sentence.
- (iii) That the trial court failed to take into account the fact that they pleaded guilty without wasting the time of the court.
- (iv) That the appellants should not be allowed to mix with hardcore criminals.

The appellants were each granted leave to rely on written submissions. In their written submissions the appellants urged this court to take into account the fact that they are remorseful and they should be released to avoid them mixing with hardcore criminals. It is also argued that they are first offenders and

that they should be given a chance to go back to school.

The appeal is vehemently opposed by Miss Mwaniki the learned State Counsel, who urged this court to dismiss the same on the ground that the trial court all the relevant principles of sentencing and that the sentence was not harsh nor excessive.

This appeal is basically against sentence. It is trite law that an appellate court will not normally interfere with the discretion of a trial court as to sentence unless it is shown that it overlooked some material factors, took into account some immaterial factors, acted on a wrong principle or that the sentence is manifestly excessive in the circumstances of the case. I have already set out in general the complaints raised by the appellants against the way the discretion on sentence was exercised by the learned Resident Magistrate.

I have carefully considered the submissions argued by the appellants and the learned State Counsel. I have also perused the record. Before sentencing the appellants, the learned Resident Magistrate said as follows:

“I have considered the mitigation by the accused and that they are first offenders. Both are remorseful. They have pleaded guilty to the charge. The offence they are charged with is serious and calls for a deterrent sentence as I have noticed from the cases brought to this court and leading to convictions that theft of livestock is rampant within this area. This needs to be changed.”

I have purposely reproduced in verbatim what the trial court said before sentencing. It is clear that the trial court took into account all the relevant principles of sentencing. Section 278 of the Penal Code gives a maximum sentence for such an offence of 14 years. By the time the appellants appeared before court, they were no longer children but were adults. I am convinced that the decision of the trial court should not be faulted.

In my view the sentence of 4 years in the circumstances of this case is neither excessive nor harsh. The sentence is legal and I see no need to interfere with it. The appeal is dismissed in its entirety.

Dated and delivered at Mombasa this 4th day of April 2006.

J.K. SERGON

J U D G E

In the presence of the Appellants and in the presence of Miss Mwaniki for the State.