



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

**Criminal Appeal 330 of 2004**

*(From original conviction and sentence in Criminal Case No.2206 of 2004 of the Principal Magistrate's Court at Nyahururu – KATHOKA NGOMO, P.M.)*

**JAPHETH RESA NYANGWAI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with committing an unnatural offence contrary to Section 162B of the Penal Code. The particular of the offence were that on 17<sup>th</sup> May 2004 at H.Village in Laikipia district within the Rift Valley Province he had carnal knowledge of an animal namely a cow. He pleaded guilty to the said charge and was convicted and sentenced to serve ten years imprisonment. He was a first offender. The appellant was aggrieved by the said sentence and preferred an appeal to this court saying that the sentence was harsh and excessive.

When the appeal came up for hearing he pleaded with the court to reduce the sentence saying that he had young children which he needed to go and take care of. Mr. Gumo, Assistant Deputy Public Prosecutor chose to leave the matter to the court's consideration.

I have perused the short proceedings and noted that the appellant was properly convicted of the said offence. In his mitigation before the trial court he prayed for lenience saying that he had no wife. If that was his excuse for engaging in the unnatural offence which he was charged with, this court cannot have mercy on such a person who now says that he has young children which he wants to go and take care of. He may turn to be a molester of the said children, if indeed he has any. In any event the trial court exercised its discretion properly in handing down the sentence of ten years of imprisonment to the appellant, considering that the maximum sentence of such an offence is fourteen years. I see no basis of interfering with the sentence that was pronounced by the trial court and I dismiss this appeal.

DATED, SIGNED and DELIVERED at Nakuru this 5<sup>th</sup> day of October, 2006.

**D. MUSINGA**

JUDGE

Judgment delivered in open court in the presence of the present and Mr. Gumo, Assistant Public Prosecutor for the state.

**D. MUSINGA**

JUDGE