



Appeal against sentence; an appellate court will not normally interfere with the discretion exercised by the trial court in sentencing unless it is shown or it is evident that the trial court acted on the wrong principle, or overlooked some material factor or the sentence was manifestly excessive

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

Criminal Appeal 266 of 2003

{Appeal against the judgment of Mr. C. M. MWEBI, SRM in Mumias Criminal Case

No.845 of 2002)

SALIM MARTIN MAKOKHA APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

The appellant, SALIM MARTIN MAKOKHA, was convicted on 16.10.2002 in Mumias Criminal Case No.845 of 2002 by the Senior Resident Magistrate, C. M. Mwebi, Esq., on the offence of stock theft contrary to section 278 of the Penal Code. The particulars of the charge were that *“the appellant on the night of 12th and 13th October, 2002 at Shibala “B” village, Namulungu Sub-location, Matungu location in Butere/Mumias District of the Western Province, stole a bull and one light brown cow both valued at Shs.32,000/= the property of Fredrick Bakhuya Osundwa.”*

He pleaded guilty to the charge and admitted the facts. In mitigation, he prayed for leniency and told the trial court he had children at home who depended on him.

After noting the mitigation, the trial court sentenced him to 5 years imprisonment with hard labour.

The appellant was the complainant’s immediate neighbour. The appellant knew him.

The offence of stock theft contrary to section 278 of the Penal Code is a felony punishable with imprisonment for a term not exceeding fourteen years with hard labour.

In his Petition of Appeal against severity of sentence, the appellant submitted that the trial court failed to consider his mitigation. He then proceeded to offer mitigation with a prayer for a non custodial sentence. He also prayed for quashing of his conviction.

Under section 348 of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, no appeal is allowed where an accused person has pleaded guilty and has been convicted on that plea by a subordinate

court, except as to the extent or legality of the sentence. In the present appeal, the appellant has not challenged the unequivocality of his plea and therefore he is not entitled to challenge the conviction based on his own plea of guilty.

Mrs. Kithaka, Principal State Counsel, who appeared for the State/Respondent expressed the view that the stolen animals were recovered and that the sentence could be interfered with.

I have perused the record of Appeal and given due consideration to the petition and the submission made on behalf of the Respondent.

An appellate court will not normally interfere with the discretion exercised by the trial court unless it is evident that the trial court acted upon the wrong principle or over looked some material factor or the sentence is so manifestly excessive in the light of the circumstances that it ought to be varied. In this appeal, the trial court appears to have exercised its discretion properly and I see no reason to interfere with it. I dismiss the appeal.

Dated at Kakamega this 15th day of July, 2005.

G. B. M. KARIUKI

J U D G E