

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
MACHAKOS
APPELLATE SIDE

Criminal Appeal 224 of 2003

*(From Original Conviction(s) and Sentence(s) in Criminal Case No 117 of 2003 of
the Senior Resident Magistrate's Court at Kangundo N.N. Njagi on 14/2/03)*

BENSON MBUVI MUTHIANI APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G E M E N T

Benson Mbuvi Muthiani, was charged with the offence of stealing stock Contrary to Section 278 of the Penal Code in Criminal Case 117/03 at Kangundo Court. He appeared before the Senior Resident Magistrate's Court on 24/2/03, when he pleaded guilty, was convicted and sentenced to 8 years imprisonment and 8 strokes of the cane. The appellant has appealed against the sentence on grounds that it was harsh and excessive; he is remorseful and promises not to repeat any other offence as he learnt his lesson from the suffering he has undergone when in prison. His plea is to the court to have mercy on him or reduce the sentence.

The state counsel, Mr O'Mirera, opposed the appeal. His contention is that the sentence is not harsh or excessive as the offence is serious and rampant and a deterrent sentence should have been meted out and he urges the court not to interfere.

The appellant pleaded guilty and did not therefore waste the court's time. He was treated as a first offender. The stolen cow was recovered. At the time of sentencing the prosecutor never said that this kind of offence was prevalent. From the 18/2/03 to date the appellant has served about 2 ½ years.

All the appellant has done is appealing to the mercy of the court. All facts of this case considered, it is my view that the sentence meted was harsh and excessive in the circumstances and I will allow the appeal by reducing the sentence to 4 years imprisonment. Corporal punishment has been done away with by an amendment of the law in 2003 and the sentence on corporal punishment is set aside too. Orders accordingly.

R.V. WENDOH
JUDGE

Dated at Machakos this 29th day of September 2005