

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 32 OF 2003.

DOMINIC CHIMBI WANYAMA ::::::::::::::::::::::::::::::: APPELLANT.

VERSUS

REPUBLIC ::::::::::::::::::::::::::::::::::::::: RESPONDENT.

J U D G M E N T.

The appellant was charged before the Resident Magistrate at Kapenguria with two counts of theft of stock contrary to section 278 of the Penal Code and in the alternative with two counts of handling stolen property contrary to section 322 (2) of the penal code. In the first substantive count appellant was charged with stealing five donkeys valued at Ksh. 15,000/= and in the second substantive count he was charged with stealing three donkeys valued at Ksh. 9,000/=. He pleaded guilty to the substantive charges and was sentenced to 3 years imprisonment on count one, and 2 years imprisonment on count two. The sentences to run concurrently thus totaling a prison term of 5 years. He was also sentenced to receive two strokes of the cane. He was sentenced on 12th March, 2003.

He has appealed to this court against sentence in the ground that he is a first offender, that he pleaded guilty to the charges; and that he has a father, children and brothers who depend on him. He has asked for a reduction of the sentence.

Learned State Counsel Ms. Oundo submitted that the sentence of strokes of the cane is now illegal due to an amendment to the law and that the sentence totaling 5 years imprisonment was excessive as the stolen animals were recovered. She asked the court to exercise its discretion under section 354 of the Criminal Procedure Code (cap 75.)

I take note of the fact that the appellant is a first offender and he pleaded guilty to the two counts. Also, according to the facts of the case as narrated by the prosecutor, the stolen animals were actually recovered. Having considered the circumstances of this case, I am inclined to exercise my discretion in terms of section 354 of the Criminal Procedure Code on the sentence of imprisonment. I am of the view that the consecutive sentence is excessive. I therefore make the prison sentences to run concurrently, resulting in an aggregate sentence of 3 years imprisonment. As the sentence of strokes of the cane has been outlawed, I quash the sentence of two strokes of the cane.

In the result therefore I allow this appeal in part and convert the consecutive prison term to a concurrent prison term and quash the sentence of two strokes of the cane. The appellant will therefore serve a prison sentence of an aggregate of 3 years imprisonment.

Dated and delivered at Kitale this day of 2004.

GEORGE DULU.

JUDGE.

Read in the presence of: