



REPUBLIC OF KENYA



**KENYA LAW**  
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**Neta v Republic (Criminal Appeal E058 of 2023)  
[2025] KEHC 6415 (KLR) (20 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6415 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL APPEAL E058 OF 2023  
AK NDUNG’U, J  
MAY 20, 2025**

**BETWEEN**

**KARISIAN NETA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from original Sentence in Nanyuki CM  
Criminal Case No 859 of 2020– Kithinji A.R CM)*

**JUDGMENT**

1. The Appellant , Karisian Neta was convicted on his own plea of guilty of stealing stock contrary to Section 278 of the *Penal Code*. The particulars were that on the night of 24<sup>th</sup> and 25<sup>th</sup> day of May 2020 at unknown time at Solio Village One in Laikipia Central sub-county within Laikipia County, jointly with others not before court stole 46 sheep valued at Kshs.230,000/- the property of Joseph Thirikwa Mureithi. On 18/05/2023, he was sentenced to three (3) years imprisonment.
2. The Appellant has appealed against the sentence only. He filed a document titled ‘mitigation grounds of appeal’ and raised the following grounds;
  - i. That he pleaded guilty thus saving court’s time and expenses.
  - ii. That he is a family man, a husband of two wives and 11 children and sole breadwinner.
  - iii. That he is remorseful and vow not to repeat the offence.
  - iv. That he has rehabilitated as he had undergone spiritual nourishment through bible lessons and learnt various life skills while serving his term of imprisonment.
  - v. That he be accorded a non-custodial sentence as he was not afforded the same during sentencing.



- vi. That he be afforded an option of fine as the sheep were returned to the complainant.
- vii. That his prayer be fairly considered as provided by Article 27(1) of *the Constitution* as everybody requires a second chance.
3. He argued that he was the sole breadwinner and urged the court to consider an option of a reasonable fine as he was not reimbursed the cash bail of Kshs.54,000/- he deposited with the court. He further urged the court to afford him a non-custodial sentence through CSO or probationary terms.
4. In opposing the appeal, the Respondent's counsel filed written submissions. He submitted that the guilty plea was unequivocal as the trial court complied with Section 207(2) of the *Criminal Procedure Code* as the charge and every element was stated to the Appellant in a language that he understood and the facts were read to him which he admitted. As to sentence, he submitted that the Appellant was not a first time offender as the record shows that he had previously been convicted in Criminal Case No. 870 of 2020 with a similar offence of stealing stock and he was fined Ksh.70,000/- That Section 278 of the *Penal Code* provides for a sentence of 14 years and the Appellant was sentenced to 3 years. That while sentencing him, the trial court considered that he had previous record hence a rehabilitative prison sentence was thus called for. He submitted that the sentence was lawful, lenient and appropriate in the circumstances.
5. This is an appeal against the sentence only. I have in that regard considered the submissions by the parties. I have also read through the record of the trial court. The Appellant has not challenged his conviction and the manner the plea was taken.
6. The Appellant was accused of contravening the provisions of Section 278 of the *Penal Code* which provides thus;

“If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, whether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”
7. The maximum sentence as per the above proviso is 14 years. The Appellant was sentenced to 3 years. While sentencing the Appellant, the trial court considered his mitigation, the nature of the offence and the fact that he was a repeat offender.
8. The record shows that he had previously been convicted in two other offences of stealing stock in Criminal Case 870 of 2020 and he was fined Kshs.70,000/- in default 12 months imprisonment and Criminal Case 868 of 2020 and he was fined Kshs.60,000/- in default 12 months imprisonment.
9. It is trite law that sentencing is at the discretion of the trial court and an appellate court will not easily interfere with the discretion of the trial court on sentence unless it is shown that in exercising its discretion, the court acted on a wrong principle; failed to take into account relevant matters; took into account irrelevant considerations; imposed an illegal sentence; acted capriciously or that the sentence imposed was harsh and excessive. (*Ogolla S/o Owuor v R* [1954] EACA 270).
10. The Appellant did not allege any of the above factors. As noted earlier, he was a repeat offender hence a rehabilitative sentence was necessary in the circumstance.
11. Notably, the family circumstances he raises and the rehabilitation he has received at prison do not confer this court with jurisdiction to interfere with the sentence. The family circumstances ought to have been subject of consideration by the trial court and any rehabilitation and good behavior at prison



is within the purview of prison authorities through remission of sentence or through a petition to the power of mercy committee.

12. The sentence was legal and indeed very lenient. This court has no basis upon which to interfere with the same.
13. The appellant has raised an issue of non-refund of his cash bail of Ksh 54,000 deposited in court. Certainly, such refund was automatic upon conclusion of the trial if at all he had deposited the monies as alleged. I direct the Deputy Registrar of this court to do an inquiry into the matter and report to this court within 14 days. The matter shall be mentioned on the 5<sup>th</sup> of June for that purpose.
14. The result is that the appeal herein lacks merit and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF MAY,2025.**

**A.K. NDUNG’U**

**JUDGE**

