



**Kinyili v Republic (Criminal Appeal E087 of 2022)
[2024] KEHC 291 (KLR) (12 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E087 OF 2022
GMA DULU, J
JANUARY 12, 2024**

BETWEEN

LEONARD MULINGE KINYILI APPELLANT

AND

REPUBLIC RESPONDENT

(From the conviction and sentence in Criminal Case No. 970 of 2021 at Kilungu Law Courts delivered on 14th December 2021 by Hon. C. A. Mayamba (PM))

JUDGMENT

1. The appellant having been charged with stealing stock contrary to Section 278 of the *Penal Code*, and in the alternative to handling stolen goods contrary to Section 322(1)(2) of the *Penal Code*, was recorded as having pleaded guilty to the main count of stealing stock, the particulars of which being that on the night of 12th and 13th December 2021 at Wathini village in Makueni County stole two goats valued at Kshs. 13,000/= the property of Charles Katua Masia.
2. He was thus convicted and sentenced to five (5) years imprisonment.
3. He has now come to this court on appeal against sentence. The appeal was canvassed through written submissions. In this regard, I have perused and considered submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions. The Director of Public Prosecutions opposes the appeal and emphasizes that the minimum statutory sentence for the offence is 14 years imprisonment.
4. I have considered the grounds of appeal and submissions on both sides. I have also perused the record of appeal.



5. The Director of Public Prosecutions is correct on the maximum statutory sentence for the offence. I note also that when the appellant was given an opportunity by the trial court to mitigate he said ‘sina la kusema’ – ‘I have nothing to say’ in his mitigation. It means he chose not to mitigate.
6. I have still considered that from the facts given by the prosecutor before the trial court, the two goats were recovered, and the accused person actually pleaded guilty and did not waste the court’s time. However the appellant was a repeat offender in Criminal Case No. E298 of 2021 in which he had been put on probation for six (6) months. His activity of stealing the two goats was thus a violation of the probation orders.
7. I thus find that with the facts and circumstances placed before the trial court during sentencing, the trial court was correct in exercising its discretion in determining the appropriate sentence herein.
8. I consequently dismiss the appeal and uphold the sentence of the trial court.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF JANUARY 2024 AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Ms. Nusura – Court Assistant

Appellant

Ms. Omolo for DPP

