



REPUBLIC OF KENYA



**Keinan v Republic (Criminal Case E009 of 2024)
[2024] KEHC 7994 (KLR) (21 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL CASE E009 OF 2024**

JN NJAGI, J

JUNE 21, 2024

BETWEEN

LECHAON KEINAN APPELLANT

AND

REPUBLIC RESPONDENT

SENTENCE

1. The appellant was convicted on his own plea of guilty for the offence of stealing stock contrary to section 278 of the Penal Code. The particulars of the offence were that on the 27th October 2023 at about 9 am at Logologo location in Marsabit South sub county within Marsabit County he stole two goats and one sheep valued at Ksh.30,000/= the property of Marian Keinan (herein referred to as the complainant).
2. The appellant was sentenced to serve 3 years imprisonment. He was dissatisfied with the sentence and filed this appeal.
3. The facts given in the case after the appellant pleaded guilty were that the accused is a son to the complainant. That on the material day a son to the complainant aged 11 years was grazing his father's livestock in the grazing field when the appellant went there and lied to him that he had been sent by their father to pick 2 goats and one sheep. The brother fell for the lie and allowed him to take the animals away. In the evening the boy went home and informed his father. The accused was traced at Logologo market but the animals were not recovered. The matter was reported to the police. He was charged with the offence. He admitted the charge.
4. The prosecution told the trial court that they did not have records for the appellant. He was thus treated as a first offender.



5. The appellant asked this court to forgive him and reduce the sentence of 3 years. He told the court that his wife ran away and left his children without anybody to look after them. He submitted that the trial court overlooked his mitigation.
6. The Respondent on the other hand submitted that sentence lies at the discretion of the trial court. That the offence of stock theft attracts a sentence of 14 years imprisonment. The appellant was given 3 years imprisonment. That the sentence being an exercise of discretion, this court has no reason to interfere with the sentence.
7. I have considered the grounds of appeal advanced by the appellant. The appellant mitigated before the trial court that he was seeking for leniency and that he would not repeat such an offence. That he had a family and was the sole breadwinner.
8. Sentencing is a matter that lies within the discretion of the trial court. In *Farah Abdi v Republic* (2006), Makhadia J. (as he then was) held that:

Sentencing is generally a matter for the discretion of the trial Court. The discretion must however, be exercised judicially and not capriciously. The trial Court must be guided by evidence and sound legal principles. It must take into account all relevant factors and eschew all extraneous or irrelevant factors. Certainly the Appellate Court would be entitled to interfere with the sentence imposed by the trial Court if it is demonstrated that the sentence imposed is illegal or is so harsh and excessive as to amount to a miscarriage of justice, and or that the Court acted upon wrong principle, took into account irrelevant and extraneous factors and finally if the Court exercised its discretion capriciously.

9. The Court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR discussed the principles of sentencing and cited the Supreme Court of India in *Alister Anthony Pereira v State of Mahereshra* at paragraph 70-71 where the court held the following on sentencing:

Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principles of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

10. The Kenya Judiciary Sentencing Policy Guidelines, 2016 outline the purposes of sentencing at page 15, paragraph 4.1. as follows:

“ Sentences are imposed to meet the following objectives:

- (1) Retribution: To punish the offender for his/her criminal conduct in a just manner.
- (2) Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.



- (3) Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
- (4) Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
- (5) Community protection: To protect the community by incapacitating the offender.
- (6) Denunciation: To communicate the community's condemnation of the criminal conduct.

11. The offence the appellant was charged with attracts a sentence of 14 years. The appellant stole from his own father. The value of the animals he stole was Ksh.30,000/=. This might look like some little money but it is not for some rural folk. I do not think that the sentence of three years was excessive. With remission if the appellant is of good character, he should be out of prison in two years' time.

12. The upshot is that I find no merit in the appeal and thereby dismiss it.

Delivered, dated and signed at MARSABIT this 21st June 2024

J. N. NJAGI

In the presence of:

Mr. Otieno for Respondent

Appellant – present in person

Court Assistant- Jarso

14 days R/A.

Page 2 | 2

