



REPUBLIC OF KENYA



KENYA LAW
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**Lopeyo v Republic (Criminal Revision E063 of 2022)
[2023] KEHC 17500 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION E063 OF 2022
CM KARIUKI, J
MAY 18, 2023**

BETWEEN

JOHN APUSH LOPEYO APPLICANT

AND

REPUBLIC RESPONDENT

*(In the matter of revision of sentence issued by the Hon. V Kiplagat
Senior Resident Magistrate in Nyabururu Chief Magistrate Court
Criminal Case MCCR E1659 of 2022 – Republic – versus on 24/10/22)*

RULING

1. The Applicant lodged an application undated but filed on 7/11/2022 for Sentence Review after he was sentenced to six years imprisonment with no option of a fine.
2. The charge had the limb of stealing stock Contrary to Section 278 and alternative handling stolen goods.
3. The 1st limb particulars were that on 22/1/2022 at Ken village at Nyahururu Laikipia County stole one cow worth Ksh 60,000 of Peris Wanjiru.
4. On alternative charge (count). He is said at the same date and place dishonestly retained one cow heifer having reasons to believe to be stolen goods.
5. The facts narrated in court stated that on October 21, 2022 at 10a.m at Ken Village, Marmanet accused stopped while driving a cow. Thus, the owner was called and identified the same.
6. The accused confirmed facts were correct.
7. However, in mitigation, he claimed he was called via a private number to drive the cow.



8. He was said not to have a previous record.
9. The trial court did not indicate whether accused was convicted of main offence or alternative count.
10. The court just went straight away into sentencing the accused to six(6) years with no option of a fine.
11. Of course, the facts narrated do not disclose the theft element.
12. On handling stolen goods contrary 322 (1) PC Cap 63
The Provisions stipulate that:
 - (1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or having reason to believe them to be stolen goods, he dishonestly receives or retains the goods, or dishonestly undertakes or assists in, their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.
Subsection (2) of the provisions of 322 provides a maximum sentence of fourteen(14) years.
13. Of course, the facts narrated had element of offence of the handling of the stole goods thus the court now orders the accused to be and is hereby convicted of an offense of handling stolen goods contrary to section 322 (1) PC Cap 63.
14. On sentence, the accused is a first offender and had pleaded guilty to the offence, and the fact that the cow was recovered persuades this court that the mitigation factor is obtaining hereof.
15. The trial court thus meted out the accused with excessive and harsh sentences in the circumstances.
16. However, the objective of the sentence in crime is deterrence, retribution, and rehabilitation. The accused has to be punished
17. Thus, the court reduces the sentence from six (6) years to three (3) years to run from October 24, 2022 when the trial court sentenced him on October 24, 2022.

DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 18TH DAY OF MAY 2023.

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CHARLES KARIUKI

JUDGE

