



**Mohamed v Republic (Criminal Appeal E025 of 2021)
[2023] KEHC 19606 (KLR) (3 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E025 OF 2021**

JN ONYIEGO, J

JULY 3, 2023

BETWEEN

IBRAHIM ALI MOHAMED APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence delivered on 13th July 2021 by honourable
Makoross (P.M) Wajir magistrate's court in criminal case number E 285 of 2021)*

JUDGMENT

1. The accused herein was charged with the offence of stock theft C/S 278 of the [Penal Code](#). Particulars were that on the June 3, 2021, at around 1130 hours at Dambas Location in Tarbaj Sub-County within Wajir County stole eleven cows valued at Kshs 250,000 the property of his mother Halima Farah Gedi.
2. He was also charged with the alternative count of handling stolen goods contrary to Section 322(1) (2) of the Penal Code. Particulars were that on the June 3, 2021 at Tarbaj Sub-County within Wajir County, otherwise than in the course of stealing dishonestly retained eleven (11) cows valued at Kshs 250,000 knowing or having reason to believe them to be stolen goods.
3. Upon returning a plea of not guilty, the case proceeded to full trial. At the close of the trial, accused was convicted of the main count and sentenced to 4 years imprisonment on July 13, 2021.
4. Dissatisfied with the conviction and sentence, the appellant filed his appeal on July 26, 2021 challenging the conviction and sentence on grounds that; he was in a state of confusion when he tendered his defence; there was no eye witness called to confirm that he was at the scene of crime when the cows were stolen; the photos produced in court did not show him appearing together with the stolen cows; the investigating officer did not testify that he was the one who stole the cows.



5. When the matter came up for hearing, the appellant opted to argue the appeal only against the sentence and not conviction. He pleaded for leniency on grounds of old age. On their part, the respondent relied on their submissions filed on April 25, 2023 thus contending that the sentence imposed was legal and appropriate.
6. It is trite that sentencing is at the discretion of the trial court and an appellate court can only interfere if the same is excessive; the trial court applied wrong principles or that it considered irrelevant factors. See *Shadrack Kipkoeb Kogo - vs - R Eldoret Criminal Appeal No 253 of 2003* where the Court of Appeal stated thus;

 ' Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also Sayeka – vs- R (1989 KLR 306)'

7. In the instant case, the appellant was charged with the offence of stock theft which carries a maximum penalty of imprisonment term not exceeding 14 years. I have considered the seriousness of the offence and the penalty imposed of 4 years. I have also noted that the pre-sentence report was not favourable. According to the report, the community and the family members do not want the appellant at home as he has been a thorn in the flesh and he is a habitual thief in the community. I find the sentence to be proportionate with the offence committed hence not excessive.
8. In view of my holding above, I do not find merit in the appeal hence the same is dismissed
Right of appeal 14 days.

Dated, signed and delivered in open court at Garissa this July 3, 2023

.....

J.N.ONYIEGO

JUDGE

