



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL APPEAL NO. 2 OF 2020

IBRAHIM KEMBOI CHELIMO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence of Hon Biwott, SPM, dated 8th January 2020

in Criminal Case No 8 of 2020 in the Senior Principal Magistrate's Court at Kabarnet,

Republic v Ibrahim Kemboi Chelimo)

JUDGMENT

In his petition to this court the appellant has appealed against his sentence of three years' imprisonment in respect of the offence of stock theft contrary to section 278 of the Penal Code (Cap 63) Laws of Kenya.

In his mitigation to this court, the appellant has submitted as follows. He is a first offender. And that he was influenced to commit this offence due to drinking alcohol, which he has promised to stop taking.

He is married and has a young family who depend upon him as their sole bread winner. He has also stated that the victim has forgiven him.

Mr. Mong'are for the respondent has not taken any position in respect of this matter. Instead he has submitted that this court exercises discretion in the matter.

In sentencing the appellant, the trial court took into account that the appellant was a first offender and was remorseful. It then proceeded to sentence the appellant to three years' imprisonment.

This is a first appeal. I have independently re-assessed the sentence imposed upon the appellant as a first appeal court. As a result, I find that the trial court failed to take into account that the two goats that were stolen were recovered and were ordered returned to the owner on 8/1/2020. This is an error of law that entitles this court to interfere with the sentencing discretion of the trial court.

In the circumstances, I find that the sentence imposed was manifestly excessive and I hereby reduce it to the one already served.

In the premises, the appellant's appeal succeeds and is hereby ordered released unless held on other lawful warrants.

Judgment dated, signed and delivered in open court at Kabarnet this 9th day of February 2021.

J M BWONWONG'A

JUDGE

In the presence of

Mr. Kemboi Court Assistant.

Appellant present in person.

Mr. Mong'are for the Respondent.