



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL APPEAL NO. E017 OF 2020**

**CORAM: HON. R.E. ABURILI J**

**MESHACK OUMA OWUOR.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Appeal from the judgment, conviction and sentence in Bondo PM Cr Case No.E108 of 2020***

***delivered on 3/11/2020 by Hon S.W Mathenge, Resident Magistrate)***

**JUDGMENT**

1. I have considered the appeal against sentence as the appeal against conviction was withdrawn. The Appellant was convicted on his own Plea of guilty for the offence of stealing stock contrary to Section 278 of the Penal Code and sentenced to serve 1 year imprisonment. He is a first offender and the value of the goat was not recovered. The sentence imposed was admittedly lawful and lenient, as the maximum provided for under Section 278 of the Penal Code is 14 years imprisonment.
2. Sentencing is in the discretion of the trial court and an appellate court should not interfere with that discretion save in exceptional circumstances.
3. In his mitigation, the Appellant pleaded for forgiveness. The trial court considered the offence and mitigation but she did not consider that he was a first offender.
4. Under Article 50(2)(p) of the Constitution, every convicted person is entitled to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been charge between the time the offence was committed and the time of sentencing and (q) to appeal for review by a higher court as prescribed by law.
5. The Appellant having been a first offender, the trial court should have considered calling for a Probation or Presentence report to appreciate the appellant/convict's antecedents before imposing the sentence however lenient it was.
6. Having said that, I find that it is in the interest of justice that the appellant be considered for a least severe sentence and which sentence is now custodial, considering the fact that he is a first offender, he pleaded guilty to the charge and that our prisons have been full such that admitting there suspects or convicts of more serious offences has been a challenge as petty offenders are holed up there.
7. For the above reasons, I hereby exercise discretion and allow this appeal against sentence. I review the sentence imposed on the Appellant and set aside the 1 year imprisonment imposed on him and substitute it with a fine of fourteen thousand Kenya shillings, Kshs. 14,000/= in default to serve the remainder of the 1 year imprisonment term.
8. Orders accordingly.

**Dated, signed and Delivered at Siaya this 2<sup>nd</sup> Day of February, 2021**

**R.E. ABURILI**

**JUDGE**

***In the Presence of:***

Appellant and his Counsel Mr. Nyachoti K. Advocate

Mr. Kakoi, Principal Prosecution Counsel

Court Assistant: Modestar and Mr. Mboya