



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. 153 OF 2019

STEPHEN NZIOKA MULINGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the original Conviction and Sentence of Hon. C. A. Mayamba (PM)

in Kilungu Principal Magistrate's Court Criminal Case No. 737 of 2019

delivered on 26th August, 2018)

JUDGMENT

1. **Stephen Nzioka Mulinge** the Appellant herein was charged with the offence of stealing stock contrary to Section 278 of the Penal Code. The particulars are that the Appellant on the 24th day of August 2019 at Kimwatho Village, Kee Location in Makueni County stole one cow valued at Kshs. 40,000/=, the property of Mary Mutunga.
2. He was arraigned before the court on 26th August 2019. The charge was read to him and he admitted it. After facts were read to him he admitted them and he was convicted and sentenced to 18 months imprisonment.
3. His appeal is against the sentence only.

He cited the following as his grounds:-

- 1) **THAT** he is a first offender hence prays for leniency.
- 2) **THAT** he is deeply remorseful, repentant and regret his action.
- 3) **THAT** he is spiritually upgraded through the department of spiritual reformation and now as an ambassador of Christ.
- 4) **THAT** he has learnt the value of patience and moral uprightness.
- 5) **THAT** he prays to the Honourable court to entreat the entire period that he has been in custody as a punishment already and reduce the sentence to the time served.
- 6) **THAT** he is ready to carry on the newly acquired virtues to the society if given a second chance.
- 7) **THAT** he prays for a non-custodial or community based sentence to give a chance to provide for his young and innocent dependants.
- 8) **THAT** the Honorable Court issue any other orders it deems fit in his circumstance of which he promises to abide by.

4. As a first appeal court, I have a duty to re-evaluate the entire record and arrive at my own conclusion. See **Okeno Vs Republic 1972 EA 32; Kiilu & Anor Vs Republic [2005] IKLR 174.**

5. I have considered the submissions by both parties. The Respondent is opposed to the appeal.

6. I have keenly considered the record to satisfy myself that the plea was properly taken. After the Appellant admitted the charge the learned prosecutor read out the facts to the court as follows;

“On 23/08/2019 at 9.00 p.m., the complainant kept her cattle safely and retired to bed. At 4.00 a.m., she heard the calf mowing. She went outside and found her grey cow missing. She reported the case. Accused was arrested and charges preferred.”

7. The facts as presented do not disclose any offence. Secondly there is nothing in the facts which links the Appellant to the offence. It is not indicated why the Appellant was arrested and charged.

8. I therefore find that the Appellant made an admission to incomplete facts which do not disclose an offence against him.

I do understand the pressure of work that Magistrates face, but care should be taken to ensure the correct procedure is always adhered to. My finding is that the plea is not unequivocal as required.

9. I therefore allow the Appeal, quash the Conviction and set aside the Sentence. The Appellant shall be set free unless otherwise lawfully held under a separate warrant.

Orders accordingly.

Delivered, signed & dated this 8th day of January 2020, in open court at Makueni.

.....

H. I. Ong’udi

Judge