



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO 79 OF 2018**

**JACKSON KONKOKO KOMOL.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Appeal from original Sentence dated 26/10/2018 in Nanyuki CM Criminal Case No 124 of 2018 – W J Gichimu, PM)***

**J U D G M E N T**

1. The Appellant herein, **JACKSON KONKOKO KOMOL**, was convicted after trial of *stealing stock* contrary to **section 278** of the *Penal Code*. On 26/10//2018 he was sentenced to serve four (4) years imprisonment.

2. Although the Appellant appealed against both conviction and sentence, at the time of hearing of the appeal he stated categorically that he wished to proceed only with the appeal against sentence.

3. The learned prosecution counsel submitted that he supported the sentence meted out to the Appellant, pointing out that the offence carried a maximum of fourteen (14) years imprisonment.

4. Although the learned magistrate who sentenced the Appellant (he was tried and convicted by a different magistrate) took into account the period that the Appellant had been in custody during his trial and the fact that the five (5) stolen head of cattle had been recovered, he appeared not to have considered him a first offender (which he was). The trial court also appears not to have taken into account the relative youth of the Appellant.

5. The Appellant stated that he is now 25 years old. That means that he was about 23 years old when he was convicted. Everybody deserves a second chance, and a shorter custodial sentence in this case would have met the ends of justice. I consider that the sentence of 4 years imprisonment was manifestly harsh and excessive in the circumstances of this case.

6. The Accused has now already served just over two (2) years and one (1) month in prison. I consider that to be sufficient punishment for the offence committed.

7. I will therefore allow the appeal against sentence by setting aside the 4 years imprisonment meted out, and by substituting therefor the time already served. That means that the Appellant shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 30<sup>TH</sup> DAY OF NOVEMBER 2020**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 3<sup>RD</sup> DAY OF DECEMBER 2020**