

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL APPEAL NO. 63 OF 2016

CHARLES NGUNYO GIDEON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from Original Sentence in Migwani Senior Resident Magistrate's Court Criminal Case No. 113 of 2015 by Hon. M. W. Murage (SRM) on 11/11/15)

J U D G M E N T

1. **Ngunyu Gideon** was convicted on his own plea of guilty on the **11th** day of **November, 2015** for the offence of **Stealing a Goat** valued at **Kshs. 8,500/=** contrary to **Section 118** of the **Penal Code** and sentenced to serve **Five (5) years imprisonment**.
2. He now appeals against sentence on the grounds that he is an orphan and a first born in the family and has a duty of taking care of his young family; and he has reformed.
3. In response the State through learned Prosecuting Counsel **Mr. Mamba** urged that there was no proof that the Appellant had reformed. He asked the Court to let him serve the full term.
4. In the case of **Bernard Kimani Gacheru vs. Republic Criminal Appeal No. 188 of 2000** the Court stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

5. Looking at the record, the Appellant admitted the charge at the outset, and the Prosecution had no record of Appeal, therefore the Appellant should have been treated as a first offender. The value of the goat that was stolen would also have been taken into consideration. In the premises the sentence was harsh.
6. The Appellant has been in custody for three (3) and a half years. In the result, I set aside the sentence imposed and substitute it with the term served. The Appellant shall be set free forthwith unless otherwise lawfully held.
7. It is so ordered.

Dated, Signed and Delivered at Kitui this **2nd** day of **May, 2019**.

L. N. MUTENDE

JUDGE