



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

HCCRA NO. 34 OF 2018

SAVAN MODANG.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Principal Magistrate's Court at Kabarnet Cr. Case no. 414 of 2017 delivered on the 31st day of August, 2012 by Hon. S.O. Temu, PM]

JUDGMENT

1. The appellant was on 31/8/17 convicted and sentenced to imprisonment for 4 years for stock theft, contrary to section 278 of the Penal Code, the particulars of which were that he had “on 18th June 2017 at Kipnai village, Kipnai Location Tiaty Sub-location within Baringo County jointly with another not before the Court stole nine (9) goats valued at Ksh.27000/= the property of David Kiplimo Torioitich.”
2. The appellant sought a reduction of sentence and urged that he had been in custody for 1 year and 9 months of the 4 years sentence which with remission becomes 2 years and 8 months.
3. The DPP did not oppose the appeal and urged that the appellant could serve the remainder of the sentence on non-custodial sentence subject to a favorable Probation Officer's Report.
4. The Probation Officers Report dated 24/4/19 was, however, negative recommending that:

“Given the negative sentiments from the complainant, the ward administrator and the immediate neighbours coupled with the fact that the appellant has not been maintaining fixed abode due to cross border movement, it is my opinion that this case is not suitable from community based sentence and may therefore be dealt otherwise.”

5. While I agree with the trial Court that the prevalence of stock theft in the area calls for a deterrent sentence, a sentence of imprisonment for 4 years is, in the circumstances of the case, excessive given the value of the stolen animals. A sentence of imprisonment for 3 years should be sufficient punishment. See *Wanjema v. R* (1971) EA 493 and *Mathai v. R* (1983) KLR 422.
6. In considering, as required by section 3 of Community Service Order Act, the Court must consider the Probation Officer's Report which in this case does not support a community based intervention.

Orders

7. Consequently, while reducing the sentence of imprisonment to a term of 3 years, the Court would not find the non-custodial Order sought by the appellant to be appropriate in his case. The appellant shall serve imprisonment for 3 years from the 23/6/2017 when he was arrested for the offence as shown on the charge sheet dated 27/6/2017.

8. As the appellant shall have served the 3 year sentence with remission on 23/6/19, only one week from today, there shall be an order for his release from custody on the time already served, unless he is otherwise lawfully held.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JUNE 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent.