

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO 103 OF 2017

MARTIN BUNDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Sentence dated 01/11/2016 in Nanyuki CM Criminal Case No 441 of 2016 – E Ngigi, SRM)

J U D G M E N T

1. The Appellant herein, **MARTIN BUNDI**, has appealed only against the sentence of 4 years imprisonment for *stealing stock* contrary to **section 278** of the *Penal Code*. That sentence was imposed on 01/11/2016. He was convicted after trial. His co-accused was acquitted. The particulars of the offence were that in the night of 3rd and 4th April, 2016 at Wangu Investment Company, Timau in Meru County, he and his co-accused jointly stole nine sheep valued at KShs 72,000/00, the property of the said company.

2. The Appellant's complainant regarding the sentence is that the trial court did not give him credit for the period that he remained in custody during his trial.

3. I have perused the trial court record. The Appellant offered no mitigation. However, he was a first offender, which fact the trial court took into consideration. But it made no reference to the period that he was in custody during his trial. It was like it was not aware of that period. Had it been aware of it, it would definitely have made reference to it and taken it into account when sentencing the Appellant.

4. The Appellant was arraigned in court on 15/04/2016 when his plea was taken. He was sentenced on 01/11/2016. That was a period of 1 year and six (6) months, not 1 year and ten (10) months as he has stated. The trial court should have taken this period into account when sentencing the Appellant. It did not.

5. In the event I will partially allow the Appellant's appeal against sentence by reducing the term of imprisonment of 4 years by the 1 year and six (6) months that he was in remand custody during his trial. That shall leave 2 years and six (6) months with effect from 30/10/2017, the date he was sentenced. That is the term of imprisonment that he shall serve. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 4TH DAY OF DECEMBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 5TH DAY OF DECEMBER 2019