



**REPUBLIC OF KENYA**

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

**(CORAM: MAJANJA J.)**

**CRIMINAL APPEAL NO. 84 OF 2016**

**BETWEEN**

**WYCLIFFE SHIKOKODI LUMULA.....1<sup>ST</sup> APPELLANT**

**PATRICK KIGAME.....2<sup>ND</sup> APPELLANT**

**WILLIS ORYUMU.....3<sup>RD</sup> APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. E. Malesi, SRM delivered on 2<sup>nd</sup> November 2016 at the Kakamega Chief Magistrate's Court)*

**JUDGMENT**

1. The appellant **WYCLIFFE SHIKOKODI LUMULA, PATRICK KIGAME** and **WILLIS ORYUMU** were convicted on their own plea of guilty for the offence of stealing stock contrary to **section 278** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars were that they with others not before the court stole two cows the property of **ANDREW MUSONYE** on 27<sup>th</sup> April, 2015 at Mukomari Village, Shanjero Sub-location, Eregi Location of Kakamega County. They were each sentenced to six (6) years imprisonment.
2. The appellants appeal is primarily against the sentence. The appellate court will not interfere in the sentence unless it is shown that the trial court took into account an irrelevant factor, or that a wrong principle was applied or short of that, the sentence was so harsh or excessive that it manifests an error of principle (see *Ogalo s/o Owuora v R* [1954] EACA 270, *Nilsson v R* [1970] EA 599 and *Wanjema v R* [1971] EA 493).
3. In sentencing notes, the trial magistrate noted that the offence was rampant and in his view a deterrent sentence of six years imprisonment was warranted. I note that indeed the maximum sentence under the **section 278** of the **Penal Code** is fourteen years' imprisonment.
4. The trial magistrate did not take into account that the appellants were first offenders and that they pleaded guilty at the earliest opportunity and that they expressed remorse. He also did not take into account the fact that the subject cows were actually recovered. I have also noted that two other co-accused who had not pleaded guilty were discharged after the matter was withdrawn under **section 87(a)** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*.
5. Having considered all circumstances and noting that the appellants have been in prison since June 2015, I reduce the sentence to time served. They are each ordered released unless otherwise lawfully held.

**DATED and DELIVERED at KAKAMEGA this 6<sup>th</sup> day of April 2018.**

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

Mr Ng'etich, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.