

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 90 OF 2017

PAUL NYABUTOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. V.M Nyaga – RM dated 29th June, 2015 at the Chief Magistrate’s Court at Kisii in Criminal Case No. 1660 of 2015)

JUDGMENT

1. The appellant, PAUL NYABUTO, was charged with the offence stealing stock contrary to section 278 of the Penal Code (Chapter 63 of the Laws of Kenya). It was alleged that on 22nd June 2015 at Bokeire Sub-location in Kisii South District of Kisii County, he stole three goats valued at Kshs. 12,000/= the property of Clement Onchari Sakawa.

2. The appellant pleaded guilty and was sentenced to serve five years imprisonment. He appeals against conviction and sentence but at the hearing, he asked the court to review the sentence.

3. The imposition of a sentence is within the discretion of the trial magistrate. The appellate court will not intervene unless it is shown that the trial court considered irrelevant facts, failed to consider relevant factors or erred on a point of principle. The court will also intervene if the sentence is harsh or excessive considering all factors (see **Ugalo s/o Owuora v. Reginam [1954]EA CA 270 and Wanjema v. Republic [1971]EA 494**).

4. In this case, the accused pleaded guilty at the first opportunity and was considered a first offender. When called upon to offer mitigation, he did not say anything. The trial magistrate stated that *“The accused person is not remorseful. The court sentences him to five years imprisonment.”*

5. The sentence was unduly harsh given the circumstances I have set out and the fact that the accused does not say anything in mitigation does not mean that he is not remorseful. According to the facts, the goats were recovered and overall, I find grounds for interference with the sentence.

6. As the appellant has been in prison for three years, I allow the appeal on sentence and reduce the same to time served. The appellant is released unless otherwise lawfully held under a separate warrant.

Dated and delivered at Kisii this 12th day of July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.