**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NUMBER 15 OF 2018**

**BETWEEN**

**ARINGORI MERIPUS .....APPELLANT**

**AND**

**REPUBLIC..... RESPONDENT**

**(Being an appeal against original conviction and sentence in Kapenguria PMCCr Case number 946 of 2018 dated 21/6/2018 by Hon P. Y. Kulecho, RM)**

**CORAM: LADY JUSTICE RUTH N. SITATI**

**JUDGMENT**

## Introduction

1. The appellant pleaded guilty to the charge of ***stealing stock contrary to section 278 of the Penal code,*** the particulars of which are that on the 20th day of June, 2018 at Kolongolo village within West Pokot County, jointly with another not before court stole six (6) cattle valued at kshs.200,000/-, the property of Nathan Musungu.

2. When the appellant appeared before the learned trial magistrate on 21st June, 2018, the charge was read and explained to him in Kiswahili, and he told the court in response that the allegations were true. The facts of the case were then read out to the appellant in Kiswahili, and when asked whether the facts were correct he stated, "**It is true**," and thereupon he was found guilty as charged, convicted and sentenced to seven (7) years imprisonment. In mitigation, the appellant asked the court for leniency as he also told the learned trial magistrate that he was deceived by the devil to commit the offence.

## The Appeal

3. Being dissatisfied by both conviction and sentence, the appellant brought this appeal premised on a number of grounds. He averred that he had pleaded guilty under coercion and because of the torture he encountered upon arrest; that his fundamental rights under the ***Constitution of Kenya*** 2010 were violated, namely that he was not given a fair trial. The appellant prays that the appeal be allowed and he be given an opportunity to defend himself.

4. This being a first appeal, and since the conviction was based on a plea of guilty, this court is required to establish whether the plea of guilty was entered in accordance with established principles and if it finds that the laid down principles were not adhered to, then the plea of guilty must be set aside, and all other factors being equal, to either acquit the appellant or order for a retrial. Generally see ***Baya versus Republic [1984] KLR 657*** and ***Mwangi versus Republic [2004]2 KLR 28.***

## Facts of the Case

5. The facts of the case are that on the 20th June 2018 at about 5.00am, at Kolongolo Village the complainant woke up and went to milk his cows, but on arrival at the cattle shed, he noticed that six of his cows were missing. He immediately reported the matter to the anti-stock theft unit who launched investigations into the theft. The investigations led to the discovery of the said cows which were in the possession of the appellant. The appellant was promptly arrested and was, on the following days arraigned before court. He admitted committing the offence. The recovered cows were returned to the complainant on the same day.

**Issues, Analysis and Determination**

6. There is no doubt from the facts of the case and the submissions made by both parties that the complainant was deprived of his six cows as a result of what the appellant did, although the cows were later recovered. The only issue for consideration, in my humble view is whether the plea of guilty taken by the trial court was unequivocal and further whether the sentence imposed by the trial court was in accordance with the law. The court notes that the charge was read out and explained to the appellant in Kiswahili Language which language the appellant confirmed he understood, and his answer to the charge was that the allegations were true. After the facts were read out to him in Kiswahili he also stated that it was true; whereupon the appellant was found guilty as charged. It has been held that in certain cases, a response like "**it is true"** would not meet the threshold of an unequivocal plea, especially when the offence with which an accused is charged is a technical one. Generally see ***Kisivi versus Republic [1991] KLR 125*** and ***Njuki versus Republic [1990] KLR 334***. The proper legal principles to be applied by trial courts concerning plea taking are those set out in **Adan versus Republic [1973] EA 445.**

7. In the instant case, the offence of which the appellant stood charged was not a technical offence, and having understood the same, I am satisfied that the answer "**it is true**" to both the charge and the facts was satisfactory for purposes of the plea in this case. It is therefore not correct as alleged by the appellant that his constitutional right to fair trial as envisaged under **Article 50(4) of the Constitution** was violated. The record shows that the appellant understood the offence with which he was charged and pleaded appropriately to the same.

8. Further, at the hearing of this appeal, the appellant's submissions in support of his plea to this court to allow the appeal were irrelevant as there was no evidence adduced in the case. Having found that the plea taken by the trial court was unequivocal, I find no merit in the appellant's appeal on conviction.

9. With regard to sentence, the appellant was sentenced to seven (7) years imprisonment. The section under which the appellant was charged provides for a maximum sentence of fourteen years imprisonment upon conviction. There is no minimum sentence now as it used to be in yester years. The question that arises for determination on the question of sentence is whether this court in its appellate jurisdiction ought to interfere with the sentence imposed by the learned trial magistrate, it being agreed that sentencing is a matter of discretion on the part of the trial court. Some authorities relevant in this regard are ***Omuse versus Republic [2009] KLR 214*** and ***Ambani versus Republic [1990] KLR 161***. Among the principles enunciated in the above cases is the principle that the sentence imposed must be commensurate to the moral blameworthiness of the offender which then means that the sentencing court must look at the facts and circumstances of the case in their entirety before settling for any given sentence.

10. In the instant case, the appellant pleaded guilty, in addition to the fact that all the six cows were recovered and handed back to the complainant. He was technically treated as a first offender. I say technically because the prosecutor told the court he did not have the previous criminal records of the appellant. The appellant also asked the court to treat him with leniency, citing the works of the devil as the culprit. I am not so sure about the appellant's contention that he was misled by the devil, although from the biblical stand point, the devil is a liar and his chief preoccupation is to lead God's people astray.

11. Considering the facts and the circumstances of this case, I am of the considered view that the sentence imposed by the learned trial magistrate was on the higher side. I therefore set the same aside and in lieu thereof impose a sentence of five (5) years imprisonment with effect from 21st June, 2018.

**Conclusion**

12. The final orders in this matter are as follows:-

**1. The appeal on conviction is dismissed.**

**2. The appeal on sentence succeeds to the extent that the seven (7) year term of imprisonment is set aside and substituted with a term of five (5) years imprisonment.**

**3. Right of appeal to Court of Appeal within fourteen (14) days from the date of this judgment.**

It is so ordered.

**Judgment delivered, dated and signed in open court at Kapenguria on this 19th day of September 2018.**

**RUTH N. SITATI**

**JUDGE**

**In the Presence of**

Present in court – Appellant

M/S Kiptoo present for Respondent

Mr. Juma Barasa – Court Assistant