



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA

CRIMINAL DIVISION

CRIMINAL APPEAL NUMBER 11 OF 2018

BETWEEN

PIUS KROP LOKAPELKORI APPELLANT

AND

REPUBLICRESPONDENT

(Being an appeal against original conviction and sentence in Kapenguria PMCCr Case number 788 of 2018 by Hon. V. O. Adet SRM dated 23/05/2018)

CORAM: LADY JUSTICE RUTH N. SITATI

JUDGMENT

Introduction

1. On 23rd May 2018, 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 22nd day of May, 2018 at Kongilai Riwo Location within West Pokot County, he stole one (1) she goat valued at kshs.5,500/- (five thousand five hundred shillings) the property of KAKUKO RIOLIONOKOU. Upon conviction, the appellant was sentenced to three (3) years imprisonment.

The Appeal

2. The appellant was aggrieved by the sentence and filed this appeal seeking to have the sentenced reduced to a non-custodial sentence. The appellant avers that the sentence imposed upon him is too harsh in the circumstances.

3. As this is a first appeal, and the appellant having pleaded guilty to the charge, this court is under a duty to reconsider whether there is reason for interfering with the sentence, assuming of course that there is no issue with the plea of guilty entered by the trial court.

Applicable Principles

4. Under ***Section 348 of the Criminal Procedure Code***, an appeal on a plea of guilty will only lie as to the legality or extent of the sentence imposed upon the appellant. Ordinarily also, an appellate court will not interfere with the sentence imposed by a trial court unless the sentence is excessive in the circumstances, or if the sentence is illegal. In ***Omuse versus Republic [2009] KLR 214***, the Court held that an appellate court ***“would not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it would not ordinarily interfere with the discretion exercised by a trial judge, unless it was evident that the judge acted on wrong principles or overlooked some material factors.”*** It was further held in the same case that ***“the Court of Appeal had jurisdiction to restore a sentence which had been altered on wrong principles and the jurisdiction did not infringe the principles set out in section 361(1) of the Criminal Procedure Code (Cap 75), which otherwise took away the court’s powers to reduce the sentence which was manifestly too severe.”***

Analysis and Determination

5. From the record, I am satisfied that the plea of guilty (which in any event is not contested by the appellant) was unequivocal. The charge was read and explained to the accused in Pokot Language which he confirmed to the court he understood. When the facts were read out to him, he confirmed to the court that the facts were true, whereupon he was found guilty as charged, convicted and sentenced to three (3) years imprisonment.

6. Having found that the plea was unequivocal, I find and hold that there is no proper reason given by the appellant to warrant interfering with the sentence downwards. **Section 278 of the Penal Code** provides for a maximum sentence of fourteen years upon conviction of the offence prescribed thereunder. In the instant case, the appellant was given only three years. Although the appellant argues that because he is a first offender, the sentence of three years ought to be reduced, that argument is neither here nor there, and in any event, the learned trial court considered the fact that the appellant was a first offender before imposing the sentence. I decline to interfere with the trial court's discretion on the extent of the sentence imposed.

7. For the above reasons, I find and hold that there is no merit in the appellant's appeal on sentence and the same is hereby dismissed.

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 person – for Appellant

M/S Kiptoo for Respondent

Mr. Juma Barasa – Court Assistant