

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 27 OF 2016

PETER NDONGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original sentence dated 11/12/2014 in Nanyuki CM Criminal Case No 443 of 2014 – E Bett , SRM)

J U D G M E N T

1. The Appellant herein, **PETER NDONGA**, was convicted after trial of *stealing stock* contrary to **section 278** of the *Penal Code*. It was alleged in the particulars of offence in the charge that on 5th May, 2014 at Kaburuini Village within Nyeri County he stole sixteen (16) sheep valued at KShs 64,000/00, the property of one Benjamin Magu. On 11th December 2014 he was sentenced to seven (7) years imprisonment. He has appealed against sentence only.
2. I have considered the submissions of the Appellant (who is unrepresented) and those of the learned prosecution counsel. I have also perused the record of the trial court.
3. The offence the Appellant stood convicted of carries a maximum sentence of fourteen (14) years imprisonment. He got only half of that. However, I note that all the sheep that he had stolen were recovered. There was also no violence against any person or property used during commission of the offence.
4. The Appellant has also pleaded that he is now a reformed person, and that he has been trained as a carpenter in prison and will be able to earn an honest living once he leaves prison. That notwithstanding, this court has no jurisdiction to exercise mercy. That is a function of the executive.
5. I have looked at all the circumstances of this case. I consider that the sentence of seven (7) years imprisonment meted out to the Appellant who was a first offender was manifestly excessive. This court is entitled to interfere. I will set aside the sentence of seven (7) years imprisonment and substitute therefor four (4) years imprisonment effective 11th December, 2014. To that limited extent only does the Appellant's appeal against sentence succeed. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 11TH DAY OF OCTOBER 2018

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 11TH DAY OF OCTOBER 2018