



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 69 OF 2018**

**MWENDWA GIDION.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal from Original Conviction and Sentence in **Mutomo Senior Principal Magistrate's Court Criminal Case No. 628 of 2015** by **Hon. S.K. NGII (RM)** on 17/12/15)*

**J U D G M E N T**

1. **Mwendwa Gedion**, the Appellant was charged and convicted on his own plea of guilty for the offence of **stealing stock contrary 278** of the **Penal Code**. Particulars of the offence were that jointly with another they stole one donkey valued at **Kshs. 15,000/=** the property of **Ngei Murimi**. His co-accused was fined **Kshs. 25,000/=** and in default to **serve five(5) years** imprisonment, but, he was sentenced to serve **three(3)years** imprisonment because he had committed another offence of **stealing stock**, having stolen a goat valued at **Kshs. 3500/=** where he was sentenced to serve **one(1) year** imprisonment.

2. Aggrieved by the sentence imposed, he now mitigates on grounds that the sentence is harsh considering his age and future prospects. That he would wish to continue with his education. He also added that he was the only eye witness to the murder of his father and those implicated are in the same jail therefore his evidence will be interfered with.

3. The State through Learned Counsel **Mr. Mamba** opposed the appeal. He urged that the Appellant did not furnish the court with any evidence of having been in school and he is remaining with **one (1) year** to complete the sentence.

4. I have re-considered what transpired in the Lower Court. I also sought information which was filed by the **County Probation Officer, Ms Koki Mwova** following a social enquiry carried out. She established that the goat that was stolen belonged to the Appellant's mother who was now ready to accommodate him as she had learnt a lesson. She was willing to support him to go back to school as he declined to continue with school and dropped out while in form three (3).

5. This being the case although it is within my knowledge that a sentence can only be interfered with if it is illegal or unlawful, this is a case that calls for interfering with the sentence following facts that have come forth. In the premises, I set aside the sentence imposed and substitute it with a **non-custodial sentence**. The offender shall be under **Probation supervision** for a duration of **one (1) year** from the date hereof.

6. It is so ordered.

**Dated, Signed and Delivered at Kitui this 4<sup>th</sup> day of December, 2018.**

**L. N. MUTENDE**

**JUDGE**