



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 57 OF 2017**

**SHADRACK YEGON.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal from Original Conviction and Sentence in Molo Chief Magistrate's*

*Criminal Case No. 592 of 2017 by Hon. R. Amwayi R. M on 06/06/17).*

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

1. **Shadrack Yegon**, the Appellant was jointly charged with others as follows:

Count 1: Stealing Stock contrary to Section 278 of the Penal Code. Particulars of offence were that on the 16<sup>th</sup> day of March 2017 at Londiani Forest within Kericho Sub-County of Rift Valley Region jointly with others stole four (4) sheep all valued at Kshs.20,000/= the property of **David Karanja**.

Count 2: Stealing stock contrary to Section 278 of the Penal Code. Particulars of offence were that on the 13<sup>th</sup> day of March 2017 at Londiani village within Londiani Sub-County of Rift Valley Region jointly with others stole nine (9) sheep all valued at Kshs.45,000/= the property of **Robert Kiplangat Maina**.

Count 3: Stealing stock contrary to Section 278 of the Penal Code. Particulars of offence were that on the 10<sup>th</sup> day of March 2017 at Londiani village within Kericho County of Rift Valley Region jointly with others stole three (3) sheep all valued at Kshs.15,000/= the property of **Francis Kirui**.

Count 4: Stealing stock contrary to Section 278 of the Penal Code. Particulars of offence were that on the 10<sup>th</sup> day of March 2017 at Londiani village within Kericho County of Rift Valley Region jointly with others stole five (5) sheep all valued at Kshs.25,000/= the property of **Samson Koech**.

Count 5: Stealing stock contrary to Section 278 of the Penal Code. Particulars of offence were that on the 10<sup>th</sup> day of March 2017 at Londiani village within Kericho County of Rift Valley Region jointly with others stole one (1) sheep all valued at Kshs.8,000/= the property of **Henry Kipngeno**.

Count 6: Stealing stock contrary to Section 278 of the Penal Code. Particulars of offence were that on the 13<sup>th</sup> day of March 2017 at Kahurura village of Londian Sub-County of Kericho County of Rift Valley Region jointly with others stole one (1) sheep all valued at Kshs.6,500/= the property of **Geoffrey Njuguna**.

In the, alternative, he faced a charge of handling stolen goods contrary to Section 322 (1) of the Penal Code. Particulars of offence were that on the 18<sup>th</sup> day of March 2017 at Londiani village within Kericho County of Rift Valley region, otherwise in the course of actual stealing unlawfully assisted in the retention of eleven (11) sheep having reasons to believe them to be stolen goods for his benefit.

2. He admitted the charge at the outset, was convicted and sentenced to serve two (2) years imprisonment on each count and the sentences were to run consecutively.

3. Aggrieved, he appealed against the sentence on grounds that the order for the sentence to run consecutively was erroneous and harsh.

4. In response, the State/Respondent through learned counsel **Mr. Omutelema** urged that the court ought to have considered the sentences running concurrently. In particular, he stated that Count 2 and Count 4 which were in respect of offences committed on the same day. Then Count 3, 4 and 5, the offences were committed on the same day. But Count 1 could be dealt with separately.

5. I have re-considered what transpired in the lower court in order to come up with my own conclusion.

6. I have been called upon to interfere with sentences meted out by the lower court. In the case of **Ogolla S/o Owuor (1954) EACC 270** the Court of Appeal stated thus:-

***“The court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”***

7. Passing sentences that run consecutively is lawful and is provided for in Section 14 of the Criminal Procedure Code that stipulate thus:-

***“Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.”***

8. In the case of **Peter Mbugua Kabui –Vs- Republic (2016) eKLR** the Court of Appeal had this to say:

***“As a general principle, the practice is that where an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment.”***

9. The offence committed in Count 1 was an act done on its own.

10. Looking at Counts 2 and 6, the offences were committed in the same transaction.

11. Then in Counts 3, 4 and 5 the offences were committed in the same transaction.

12. In his pre-sentence address the prosecuting counsel stated that the accused had been charged with serious offences but he did not notify the court if the Appellant was a first or repeat offender. In his pre-sentence address the Appellant sought for the court’s leniency. What I note is that he seems to have intended to specialize in stealing sheep. However, I do note the value of what was stolen was not too much.

13. A reading of Section 14 of the Criminal Procedure Code clearly show that in a case like the instant one where there are more than one offence committed in different transactions the court had the discretion to impose several punishments but the court can also direct that the punishment to run concurrently. Due to the peculiarity of the offences committed, I do set aside the order given by the lower court of sentences running consecutively and substitute it with an order that all the sentences shall run concurrently with effect from the date of conviction by the lower court.

14. It is so ordered.

**Dated, Signed and Delivered at Nakuru this 14<sup>th</sup> day of December, 2018.**

**L.N. MUTENDE**

**JUDGE**