



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 21 OF 2016

JOSEPH LEKAMARATIWA.....APPELLANT

versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. E. BETT – SENIOR RESIDENT MAGISTRATE dated 10th February, 2015 in Nanyuki Chief Magistrate’s Court Criminal Case No. 108 of 2015)

JUDGMENT

1. **JOSEPH LEKAMARATIWA** was charged before Nanyuki Chief Magistrate’s courts with the offence of **stealing stock contrary to section 278 of the Penal Code Cap 63**. He pleaded guilty to the offence and was sentence to 3 years imprisonment. He presents this appeal against sentence.

2. The facts of this case were that the appellant was arrested on 9th February 2015 with two sheep which were later found to belong to Regan Leiyayu. The appellant had stolen them. Both sheep were valued at Ksh.10,000. The trial court in sentencing the appellant bore in mind that the appellant was a first time offender and that the offence he committed was grave.

3. This court is guided by the principles set out in the case **MACHARIA VS REPUBLIC (2003) KLR 115** where the court stated thus:-

“The court does not alter a sentence on the mere ground that if the member of the court had been trying the appellant, they might have passed a somewhat different sentence..... The court will also not ordinarily interfere with the discretion exercised by a trial judge unless as was held in James vs Republic (1950) EA 147. It is evident that the judge has acted upon some wrong principles or overlooked some material facts.”

4. The maximum sentence under section 278 of Cap 63 is 14 years imprisonment. The appellant was sentence to serve 3 years imprisonment.

5. In my view, bearing in mind the maximum sentence that the offence attracts and bearing in mind that the appellant stole two sheep, the trial court did not err in the sentence it meted out to the appellant. The sentence in this court’s view was commensurative to the offence.

Accordingly the appellant’s appeal is hereby dismissed. The trial court’s sentence is upheld.

DATED AND DELIVERED THIS 25TH DAY OF JANUARY 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Joseph Lekamaratiwa

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE