



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 32 OF 2016

ANDREW KARIITHI.....APPELLANT

versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court Criminal Case No. 390 of 2013 by Hon. V. K. KIPTOON – Senior Resident Magistrate on 2nd April 2014)

JUDGMENT

1. **ANDREW KARIITHI (Kariithi)** was charged and convicted, after trial before the Nanyuki Chief Magistrate's Court, with two **offences of stealing stock contrary to section 278 of the Penal Code Cap 63**. The offence relate to stealing of two sheep. The trial court convicted Kariithi on the two counts and sentences him to 2 years imprisonment on the first count and 3 years imprisonment on second count. Those sentences were ordered to run consecutively. Kariithi has appealed against those sentences.
2. His appeal is grounded on the fact that Kariithi was a first offender; he has attained training in carpentry in which he has achieved grade one; and that he is reformed.
3. The learned Senior Principal Prosecuting Counsel Mr. Tanui opposed the appeal on the ground that Kariithi was convicted on two counts, the offences of which attract a maximum sentence of 14 years. In that regard learned counsel submitted that the trial court's sentence was lenient.
4. In this court's view there is no basis for interfering with the trial court's sentence. What however is of concern to this court is that the trial court ordered for the two sentences to run consecutively without assigning any reason for that order. The two counts relate to the same transaction. The complainant lost his two sheep at the same time and one of those sheep was later found in possession of Kariithi. The principle of law in sentencing is that sentence should run concurrently where the offences committed are of one transaction. Justice J. Kamau in the case **VENANT MWACHANYA V REPUBLIC (2016) eKLR** in considering that principle stated thus:-

“This principle was also expounded in the case of Ng'ang'a vs Republic (1981) KLR 530 and Ondiek vs Republic (1981) KLR 430 where the common thread was that concurrent sentences should be awarded for offences committed in one criminal transaction unless exceptional circumstances prevail.”

5. With the above in mind this court orders the trial court's **sentence of two years on the first count and three years on the second count to run concurrently**. To that extent the appellant's appeal succeeds.

DATED AND DELIVERED THIS 7TH DAY OF FEBRUARY 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Andrew Kariithi

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE