



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KABARNET**  
**CRIMINAL APPEAL NO. 79 OF 2017**  
**FORMERLY ELDORET HCCRA NO. 30 OF 2016**  
**SUSAN PETER EBELI.....APPELLANT**

**VERSUS**

**REPUBLIC**

*[Being an appeal from sentence by Kabarnet Principal Magistrate's Court (Hon. S. Temu) in Criminal Case No. 890 of 2014]*

**JUDGMENT**

1. The appellant was together with two others convicted on their own plea of guilty to a charge of stealing stock contrary to section 278 of the Penal Code. The appeal is against the sentence which the DPP urges was lenient and should not be disturbed.

2. The particulars of the offence were that:

***“On the 6<sup>th</sup> day of October 2014 at Kivumbini village in Marigat Sub-county within Baringo, Jointly stole one sheep, valued at Ksh. 7,000/-, the property of David Chebii ”.***

3. The facts of the case were that the accused had slaughtered one sheep belonging to the complainant, which had earlier been reported missing.

4. The appellant was sentenced to an imprisonment term for four (4) years on 9<sup>th</sup> October 2014, the trial court ruling as follows:

**“SENTENCE**

***The offence is common within the region and deterrent sentence is necessary. The accused are however first offenders and I have taken that into consideration. The accused will serve 4 years imprisonment to send a warning to other likeminded `1persons. Right of appeal 14 days.”***

5. The factors that the trial magistrate took into consideration sentencing according to the Record were only the –

*i. The prevalence of the offence in the region and*

*ii. The accused are however first offenders.*

## **Determination**

6. As noted in *Sentencing Guidelines for the Courts in Lesotho, 2006*, courts are advised that-

***“As an integral part of judicial power, sentencing is a sacred power/duty that vests in the courts of law; it is a function that must be exercised with a full sense of responsibility and of accountability. Extreme leniency or severity of sentence may often be antithetical to proper discharge of this function and duty. A sentence of the Court must principally serve the interests of the community, befit the offence and give the offender his just deserts.”***

7. Our own Kenyan *Sentencing Policy Guidelines, 2015* sets out the primary principle of proportionality or concept of just deserts as follows:

***“Proportionality: The sentence must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of offence as well as the responsibility of the offender.”***

See *Hoare v. The Queen* (1989) 167 CLR 348.

8. The sentence must fit the offence in gravity and also reflect the responsibility of the offender. Where persons steal a sheep which they proceed to slaughter and eat cannot have the same blame-worthiness as organised rustling of livestock.

## **Principles for interfering with sentence**

9. Trevelyan J. in *Wanjema v. R* (1973) EA 493, 494D laid down the principles upon which an appellate court may interfere with the discretion of a trial court in sentencing, as follows:

***“A sentence must in the end, however, depend upon the facts of its own particular case. In the circumstances with which we are concerned a custodial order was appropriately made. But that which was made cannot possibly be allowed to stand. An appellate court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case. The instant sentence merits this court’s interference with it in each of these grounds. No account was taken, as it should have been, of the fact that the appellant pleaded guilty: Skone (1967), 51 Cr. App. R. 165 and Godfrey (1967), 51 Cr. App. R. 449.”***

See also *Griffin v. R* (1981) KLR 121 (Hancox and Gachuhi, JJ., as they then were) approving *Wanjema*.

10. In the present case while I find custodial sentence appropriate to deter the prevalent offence of livestock theft in the region, as in *Griffin*, I too consider the sentence herein to be excessive, firstly, because the stolen animal was just one and clearly not a case of rustling and, secondly, because the trial court having failed, so far the record can show, to consider and give credit for the fact, as in *Wanjema*, that the appellant had pleaded guilty to the charge in this matter on the first day of court appearance on the 9<sup>th</sup> October 2014. I would reduce the sentence to an imprisonment term of 2 ½ years or 30 months.

## **Orders**

11. The sentence imposed on the appellant is reduced to two (2) years and six (6) months time being reckoned from the date of her arrest on 8<sup>th</sup> October 2014 in having regard to the proviso of section 333 (2) of the Criminal Procedure Code.

12. The appellant has been in custody since her arrest on 8<sup>th</sup> October 2014 and will thus have served the

period of 2 years and 6 months on the 7<sup>th</sup> April 2017.

13. Accordingly, I direct that the appellant be released from custody on the 7<sup>th</sup> April 2017, unless she is otherwise lawfully held.

**DATED AND DELIVERED THIS 5<sup>TH</sup> DAY OF APRIL 2017.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person

Ms. Macharia for DPP