



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO. 118 OF 2015

PIUS GITONGAAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No.3557 of 2015 of the Chief Magistrate's Court at Maua by Hon. A.G Munene– Senior Resident Magistrate)

JUDGMENT

The appellant, **PIUS GITONGA** , was convicted on a count of Stealing stock **contrary to section 278 of the Penal Code**. He was then sentenced to serve seven years imprisonment. This was after he had pleaded guilty.

The particulars of the offence were that on 13th October, 2015 at Bura-Njiru village, Igembe North sub county in Meru County, he stole a goat valued at Kshs.10 000 the property of **Timothy Kirimi Gitonga**.

His appeal was against sentence only. He claimed it was manifestly harsh.

Section 278 of the penal code provides as follows:

If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.

This section prescribes a maximum sentence of not more than fourteen years imprisonment. This is irrespective of the number of the stolen animals.

In the case of **SAMMUEL REIGO vs. Republic Criminal App. No. 16 of 2015 (Marsabit)** I observed as follows:

Before a sentence is passed under this section, a trial magistrate ought to be guided broadly by the following considerations:

- i. **The age of the accused person,**
- ii. **The level of education if any especially where he comes from a community whose culture glorifies stock theft,**

- iii. **The number of animals involved,**
- iv. **The criminal record of the accused if any; and**
- v. **The mitigation proffered by the accused.**

The pre-sentence report that was filed indicate the age of the appellant as 29 years. The prosecutor informed the trial magistrate that he was a first offender. The goat was recovered.

Though the court has a duty to send out a very strong signal against such offences, I am of the opinion that the sentence was manifestly harsh in the circumstances of this case.

Having considered all the necessary factors, I am persuaded to interfere with the sentence imposed by the learned trial magistrate. The appellant will serve 2 (two) years imprisonment from the date he was sentenced by the trial court. His appeal on sentence succeeds to that extent.

Dated at MERU this 11th Day of MAY 2016

KIARIE WAWERU KIARIE

JUDGE