



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CRIMINAL APPEAL NO. 174 OF 2013**

**MARTIN WAINAINA KURIA..... APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

*Being an appeal from the judgment of the Principal Magistrate's Court (S. Jalang'o) Baricho Criminal Case Number 1330 of 2012 delivered on 20<sup>th</sup> September, 2013)*

**JUDGMENT**

1. **MARTIN WAINAINA KURIA**, the appellant herein was charged with the offence of stock theft contrary to **Section 278** of the **Penal Code** vide Baricho Principal Magistrate's Court Criminal Case No. 1330 of 2012. The particulars of the offence were that between 14<sup>th</sup> and 15<sup>th</sup> December, 2012 at Gitoini village Mwea West District within Kirinyaga County he stole one bull valued at Kshs.23,000/= the property of Paul Waweru Njeru the complainant at the trial.

2. The appellant had denied the charge but after a full trial he was found guilty of the offence and sentenced to serve five years imprisonment. He felt aggrieved and appealed against both the conviction and sentence raising 5 grounds in his petition but at the hearing of this appeal, he withdrew his appeal on conviction and asked this court to reduce his sentence saying that he had reformed and that he had learnt to be useful in the society by engaging in lawful economic activities like music and counseling the youth.

3. The evidence presented at the trial court showed that the appellant stole a bull belonging to the complainant who was a neighbor to the appellant and was in the process of selling it at a livestock market when he was apprehended and later charged with the offence. The photographs of the stolen bull were produced in court as evidence. In his defence the Appellant told the trial court that he had personal difference with the complainant owing to a land dispute and the affairs which he alleged the complainant had with his wife. The learned trial magistrate however, found that the evidence adduced by the prosecution was overwhelming and found that the case had been proved beyond reasonable doubt. The Appellant was convicted and the trial court while sentencing the appellant to five years imprisonment observed as follows:

***“the evidence before court clearly shows that the accused is not a first offender. He was convicted in a charge similar to the one he is facing in this court.”***

4. The Appellant has now asked this Court to be lenient and consider reducing the sentence meted out against him. The respondent has however, opposed this stating that the sentence handed out to the appellant was lenient enough. He further contended that the appellant was not a first offender as he had been convicted of house breaking and stealing vide Kerugoya Senior Principal Magistrate's Court

Criminal Case No. 128 of 2008. It was also submitted that the appellant has in the past been convicted of trying to escape from lawful custody and this showed that the appellant was an habitual offender.

5. I have considered this appeal and the response made by the Respondent. The Appellant admitted that he has in the past been convicted of the offences stressed by the Respondent through Mr. Sitati learned counsel for the office of Director of Public Prosecution. The offence under which the Appellant was charged and convicted attracts a maximum sentence of 14 years in prison. The trial court exercised its discretion in handing the appellant five (5) years imprisonment which term is almost ending any way since he was convicted on 20<sup>th</sup> September, 2013. Besides that the Respondent opines that the trial court was lenient enough to the Appellant. It is important to note that this Court as an appellate court will rarely interfere with a discretion of a lower court unless it is established that the court did not exercise its discretion judiciously or that it omitted to take into account of some relevant factors or took into account some irrelevant factors in the exercise of that discretion. That has not been alluded to in this appeal and I have found no evidence of such in the judgment of the trial court. I have no reason therefore to interfere with the said discretion of the lower court.

In the premises this Court finds no merit in this appeal. The appellant has told this Court that he has since reformed and has recorded some inspirational songs which is commendable. The sanctions in form of prison sentences meted out to convicts are not merely meant to be punitive and a deterrent to others with similar motives but are meant to give a chance to the convicted person to reflect upon their lives and the crime committed and possibly reform in order to be useful people in the society once the term is served. That way the interest of justice is not only served but order and harmony in the society is achieved. That is the desired purpose of the law and if it is true that the appellant herein has actually reformed as he says I find it commendable but nonetheless the appeal is disallowed. The conviction and the sentence imposed by the trial court are upheld.

**Dated and delivered at Kerugoya this 18<sup>th</sup> day of July, 2016.**

**R. K. LIMO**

**JUDGE**

18.7.2016

Before Hon. Justice R. Limo J.,

State Counsel Sitati

Court Assistant Willy Mwangi

Appellant present

Interpretation: English-Kiswahili

Sitati for State present

Martin Wainaina Kura present in person.

**COURT:** Judgment signed, dated and delivered in the open court

in presence of the appellant in person and Sitati for the respondent.

**R. K. LIMO**

**JUDGE**

18.7.2016