



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIVASHA
CRIMINAL APPEAL NO. 40 OF 2015

(Being an appeal from original Conviction and Sentence in the Senior Resident Magistrate's

Court at Engineer Criminal Case No. 272 of 2015 by M. K. Mutegi - SRM)

PETER CHEGE KINYANJUI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant was convicted on two counts of the offence of Stealing Contrary to Section 275 of the Penal Code. The particulars state that on the night of the 17th March, 2015 at Yaanga village he stole a cock and two hens, the property of **Paul Kiboro Ndungu** and **Hannah Wanjiru Kiarie**, respectively.
2. The Appellant pleaded guilty to the charge and was sentenced to serve five years (5) imprisonment on each count. His appeal to this court is against sentence, his petition of appeal and submissions raising various mitigatory grounds based on the Appellant's personal circumstances.
3. The Director of Public Prosecutions through Miss Waweru opposed the appeal. Based on the Appellant's antecedents she asserted that the sentence was lenient but proper.
4. I have considered the matters canvassed. Sentencing is an exercise of discretion by the trial court and the appellate court will be slow to interfere unless the sentence meted out is illegal, is manifestly excessive or inadequate. In **Wanjema –Vs- Republic (1971) EA 493**, the court stated that:-

“[The] Appellate court should not interfere with the discretion which a trial court extended as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factors, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

5. I have on my own reviewed the matter at hand. The property in question was a cock and two hens, the latter which were recovered and restored to the owners. Unfortunately the cock was dead on recovery. One previous conviction however was proven against the Appellant.
6. Nonetheless, in the circumstances of this case, the sentence of 5 years imprisonment verges on being excessive even though legal. The Appellant has served at least thirteen months since sentencing. I do order that a probation report be tendered on his suitability to serve the remaining sentence or part thereof

on probation. Such report is to be availed within 21 days of today's date.

Delivered and signed at Naivasha, this **14th** day of **July, 2016**.

In the presence of:-

For the DPP : Mr. Koima

For the Appellant : N/A

C/C : Barasa

Appellant : absent

C. MEOLI

JUDGE