

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 255 OF 2013

(FORMERLY NYERI HC CRIMINAL APPEAL NO 131 OF 2012)

(Appeal against Sentence only in Kandara PM Criminal Case No 279 of 2012 – C Kithinji, RM)

MARGARET WAMBUI MBURU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant was tried and convicted (along with another person who apparently did not appeal) of **stealing stock** contrary to **section 278** of the *Penal Code*. She was sentenced to serve 9 years imprisonment. She appealed against the sentence only. Her grounds of appeal as appear in her petition are that the sentence was harsh and excessive; that the same was passed without considering the facts of the case; and that the trial court did not consider her mitigation and circumstances before passing sentence. She has also stated that she is deeply remorseful.

2. At the hearing of the appeal the Appellant reiterated that her appeal was against sentence only. She also said that she is a single mother with 3 children aged between 12 and 16 years, and that she is solely responsible for the maintenance and welfare of the children. Finally, she pointed out that the one cow that had been stolen was recovered live and restored to its owner. Learned *Prosecution Counsel* stated that whereas the sentence passed was lawful, it nevertheless appeared harsh and excessive considering the circumstances of the case.

3. Indeed the sentence of 9 years imprisonment was lawful as the offence carried a maximum of 14 years. In her mitigation the Appellant informed the trial court that she had a sick child whom she was taking to hospital and who she had left with her deaf mother. She was responsible for buying the child's medication and ensuring that the child took the medication. In its notes on sentencing the trial court stated that it had considered the mitigation of both accused persons, but that it found that custodial sentences are appropriate as the offence was rampant in the area, and that a deterrent sentence was needed.

4. Given the personal circumstances of the Appellant, I hold that the trial court should have called for a probation report in order to consider alternative punishment for the Appellant. In any event 9 years imprisonment for stealing one cow which was recovered live and restored to the owner was, in the particular circumstances of the Appellant, manifestly harsh and excessive. When sentencing accused persons the court ought to look beyond the accused before it and consider the possible ramifications to other persons, especially children, of the sentence imposed. The Appellant was a single mother with 3 children to take care of. Her own mother was deaf and would no doubt have difficulties taking care of the children for the period of the sentence.

5. I will partially allow this appeal against sentence. I note that the Appellant was sentenced on 9/07/2012; she has now served 3 years of her sentence. I will set aside the sentence of 9 years imprisonment imposed by the trial court and substitute therefor such period of imprisonment as will enable the Appellant to be set at liberty forthwith unless otherwise lawfully held. To that extent only does the appeal succeed. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 9TH DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 10TH DAY OF JULY 2015