

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CRIMINAL APPEAL NO. 15 OF 2014

BETWEEN

CHACHA MWITA MARWA APPELLANT

AND

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case No. 524 of 2012 at Senior Resident Magistrate's Court at Kehancha, Hon. T.A Sitati, RM dated on 14th February 2013)

JUDGMENT

1. In the Subordinate Court, the appellant was charged with stealing stock contrary to **section 278** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. The particulars were that on 7th May 2012 at Nyaroha Village of Kuria East District, Migori County, he stole one cow valued at Kshs. 40,000/= the property of MSM.
2. The prosecution called 5 witnesses and the accused was put on his defence. In his sworn testimony, he stated that, *"it is true I sold the cow I intended to refund the money ... I ask the courts time to repay ... I ask for forgiveness."* In essence, the appellant admitted the offence and was properly convicted. I find no fault in the conviction and it is therefore affirmed.
3. The appellant was sentenced to serve 7 years imprisonment. In sentencing, the learned magistrate stated that *"the minimum punishment is 7 years"* and he proceeded to impose what he considered to be the minimum sentence.
4. The first appellate court will only interfere with sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive (see **Wanjema v Republic [1971] EA 493**). In this case the learned magistrate misconstrued the provision of **section 278** of the **Penal Code** which only provides for a maximum sentence of 14 years imprisonment for the offence of stock theft. The appellate court is therefore entitled to interfere with the sentence as there was an error in principle.
5. The appellant was a first offender and readily showed remorse. He was ready and willing to compensate the complainant. Considering these factors, I reduce the sentence to time served in custody. To that extent, the appeal is allowed and the appellant is therefore set free unless otherwise lawfully held.

DATED and DELIVERED at MIGORI this 1st day of September 2014.

D.S. MAJANJA

JUDGE

Appellant in person.

Ms Owenga, Principal Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.