



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 10 OF 2014

SAMUEL ABRAHAM LEHANGOAPPELLANT

-VERSUS-

REPUBLIC..... RESPONDENT

JUDGMENT

1. Appellant was convicted at the Principal Magistrate's Court at Taveta on his own plea of guilt on two counts. He was convicted of the offence of handling stolen goods contrary to section 322(1) (2) of the Penal Code and for the offence of being unlawfully present in Kenya contrary to section 53(i) (j) as read with section 53(2) of the Kenya Citizenship and Immigration Act, 2011. He was sentenced to seven (7) years imprisonment for the offence of handling stolen goods and to six (6) months imprisonment for the offence of being unlawfully in Kenya which sentence was to run consecutively with the other sentence.

2. His grounds of appeal presented when he argued his appeal were entitled Mitigation Grounds. In those grounds he stated that-

- **He is the bread winner of the family and has a young brother for whom he pays school fees;**
- **That he will not repeat his mistake if he is released;**
- **That he had attained grades in carpentry which will assist him to earn a living;**
- **And that the Court should consider to reduce his sentence.**

3. I will be guided by the principles set out in the case TREVELYAN J in **WANJEMA -VS- R (1971)E.A 494** as follows-

“A sentence must in the end depend upon the facts of its own particular case An Appellate Court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

Bearing that case in mind I will set out the case before the trial Magistrate.

4. Appellant firstly pleaded guilty to the offence of handling stolen goods. The facts set out by the prosecution were that the complainant's four (4) cows were stolen on the night of 9th October 2012.

Those that assisted in the search of the animals arrested Appellant with the four (4) cows. Appellant confirmed the facts were correct and on the prosecution stating that he had previously been arrested for similar offence was sentenced to seven (7) years imprisonment.

5. After being sentenced to that first Count Appellant requested that the second count be re-read to him. On being re-read he pleaded guilty and was sentenced as stated before to six (6) months imprisonment.

6. In my view having regard to the lower Court's proceedings and the sentence I find no merit in Appellants appeal at all. The lower Court did not overlook any material factors nor did it take into account some immaterial factors and nor was the sentence manifestly excessive.

7. Accordingly Appellant's appeal against sentence is hereby dismissed.

Judgment by:-

MARY KASANGO

JUDGE

In the presence of:-

..... for Appellant

..... for Respondent

DATED and DELIVERED at VOI this 5TH day of NOVEMBER, 2014.

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JUDGE