

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 23 of 2008

BENSON MWANGI GICHANGI..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Appeal from original Conviction and Sentence in the Chief Magistrate's Court at Nyeri

in Criminal Case No. 5649 of 2006 by K. SAMBU – RM)

J U D G M E N T

The appellant, **Benson Mwangi Gichangi** was convicted after a full trial on a charge of stealing stock contrary to *Section 278* of the Penal Code and sentenced to 4 years imprisonment. The particulars of the offence were that on the night of 9th and 10th December, 2006 at Mahiga village in Nyeri District of the Central Province the appellant stole eight sheep and two goats valued at Ksh.30,000/=, the property of **Francis Macharia Mwangi**.

This appeal is against sentence only as the appellant at the substantive hearing of the appeal chose to abandon the appeal on conviction. The appellant is in essence urging me to reduce the sentence of 4 years imprisonment imposed. He says that the same was harsh and excessive. That for the time he has so far been in prison he has reformed tremendously.

The learned Senior Principal State Counsel **Mr. Orinda** did not support or oppose the appeal on sentence. Rather he opted to leave the issue to court.

The evidence led in the trial court left no doubt at all that the appellant stole the livestock. The maximum sentence for the offence under the statute is 14 years. The appellant was only sentenced to 4 years imprisonment which sentence was legal but lenient in view of the circumstances under which the offence was committed.

I have considered the facts of the case, the mitigating circumstances as narrated by the appellant and I am satisfied that the sentence was neither harsh nor excessive in the circumstances of the case. The learned Magistrate had in mind the proper sentencing principals. He considered as he should the prevalence of the offence in the area.

It is my view therefore that this appeal lacks merit. I order that it be dismissed.

Dated and delivered at Nyeri this 3rd day of June, 2009.

M.S.A MAKHANDIA

JUDGE