

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA

CRIMINAL APPEAL NO. E009 OF 2025

JONAS YATICH:..... APPELLANT

= V E R S U S =

REPUBLIC:.....RESPONDENT

J U D G M E N T

1. **Jonas Yatich**, the Appellant herein, was convicted on his own plea after he pleaded guilty to the following charges:-

COUNT I

Stealing contrary to **Section 278 of the Penal Code**. The particulars of the charge were that on 6/10/2023 at Kongelai in West Pokot sub-county, stole a male goat worth Kshs 6,000/= the property of Veronicah Aukor.

In the alternative he faced a charge of **Handling Stolen Property** contrary to **Section 322 of the Penal Code** in that he was found in possession of one goat on 7/10/2023 knowing the same to be stolen.

COUNT II

House breaking contrary to **Section 304 (1) (b)** and **Stealing** contrary to **Section 279 (b) of Penal Code**. The particulars of the charge were that on 30/8/2023, at Kongelai, in West Pokot sub-county, broke and entered a

building used as a dwelling house of Lawrence Plapan and stole a bicycle valued at Kshs 15,000/= and 30 kg of maize valued at Kshs 4,500/= the property of Lawrence Plapan.

COUNT III

Malicious Damage to Property contrary to **Section 339 (1) of the Penal Code**. The particulars of the charges are that on 30/8/2023 at Kongelai in West Pokot sub-county willfully and unlawfully damaged the window panes of a home belonging to Lawrence Plapan.

2. When the charges were read to the Appellant, he admitted committing the offence, was convicted on each count and sentenced as follows:-

Count I – 7 years imprisonment.

Count II – 1st limb 7 years imprisonment.

2nd limb 7 years imprisonment.

Count III – one year imprisonment.

The court directed that the sentences do run consecutively.

3. The Appellant is aggrieved by the sentence and only appeals on the sentences. The grounds of appeal are contained in the amended grounds of appeal which are to the effect that the Appellant pleaded guilty but he sentence is harsh and excessive and does not conform to the Judiciary Sentencing Policy Guidelines 2016 and 2023, lastly that the court failed to take into account his mitigation. He submitted that he is a young man,

he is remorseful, breadwinner for his aged parents; that he has done several courses while in prison which will help him be re-integrated in the society. He prays that the court reduce the sentence and the same should run concurrently. He relied on the case of **Noah Mwaita -vs- Republic [2021] eKLR** in which the court revised sentence by taking into account the Judiciary Sentencing Guidelines. The Appellant also urged the court to consider the period already served.

4. The Respondents filed submissions in which the prosecution counsel urged that the convictions were proper and so were the sentences; that on the first count, Section 278 provides that upon conviction for an offence of stock theft, one is liable to a period not exceeding 14 years; that the court considered that fact that the Appellant was a repeat offender having been convicted in Cr. E01167/21 for a similar offence and sentenced to one year imprisonment; that the court also noted that the offence was rampant in the area and sometimes leads to other serious offences.
5. On the second count, on the first limb of housebreaking, one is liable to 7 years upon conviction and 14 years imprisonment on the second limb upon conviction and that the Appellant was not given the maximum sentence.

6. As regards Count III, the Respondent submitted that it was bad in law in that this charge was related to the second count of housebreaking and theft and that therefore the Appellant should not have been charged with count III as a separate charge. Counsel relied on the case of **Silas Pkemoi -vs- Republic CRA. E010/2024** where this court ordered a retrial where an accused was charged with two charges among them the same transaction and the court ordered a re-trial. He urged the court to order a re-trial.
7. I have considered the grounds of appeal and the rival submissions of the both Appellant and Respondent. As noted earlier in this judgment, the Appellant only challenges the sentence. Sentencing is an exercise of the court's discretion as guided by the Constitution of Kenya and relevant laws of the land. The court is also guided by the 2016 Judiciary of Kenya Sentencing Policy Guidelines. Despite the importance of the guidelines, sentencing remains the exercise of Judicial discretion as stated by the Supreme Court in **Francis Karioko Muruatetu & Another -vs - Republic (2017) eKLR**. The court stated:-

“(72) we wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process”.

8. Page 15, paragraph 4.1 of the sentencing Policy Guidelines provides as follows:-

- (i) *Retribution: to punish the offender for his/her criminal conduct in a just manner;*
- (ii) *Deterrence; to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences;*
- (iii) *Rehabilitation; to enable the offender reform from his/her criminal disposition and become a law-abiding person;*
- (iv) *Restorative justice; to address the needs arising from the criminal conduct such as loss and damages;*
- (v) *Community Protection; to police the community by incapacitating the offender.*
- (vi) *Denunciation; to communicate the community's condemnation of the criminal conduct.*
- (vii) *Reconciliation; to mend the relationship between the offender the victim and the community.*
- (viii) *Reintegration; To facilitate the re-entry of the offender into the society.*

9. In sentencing the court also considers various mitigating factors. (See

Muruatetu Case)

- (1) *Age of the offender;*
- (2) *Being a first offender;*
- (3) *Whether the offender pleaded guilty;*
- (4) *Character and record of the offender;*
- (5) *Commission of the offence in response to gender-based violence;*

(6) Remorsefulness of the offender;

(7) The possibility of reform and social re-adaptation of the offender;

(8) Any other factor that the court considers relevant.

10. This court can only interfere with the sentence if the trial court considered irrelevant factors or failed to consider relevant factors or if the sentence is excessively high or low to amount to a wrong exercise of discretion.

11. After conviction, the prosecutor indicated that the Appellant was not a first offender because he had been convicted in Cr. E01167/2021 for a similar offence of stock theft and was sentenced to one year imprisonment. In his mitigation, the Appellant claimed that the complainant had his money and sought leniency. In sentencing the court considered the fact that the Appellant was a repeat offender, he did not show any remorse and had not benefited from the first sentence; that the offence is rampant in this area as the people being pastoralists. Clearly, the court considered all relevant factors.

12. The Appellant's allegation that his mitigation was not considered is untrue, the trial court took into account all the relevant factors.

13. Upon conviction under **Section 278 of the Penal Code**, one is liable to serve imprisonment for a period not exceeding 14 years. In this case the court gave a deterrent sentence bearing in mind that the Appellant had not benefited from the earlier sentence.

14. On the second count on the first limb, upon conviction one is liable to 7 years and 14 years on the second limb of stealing from the house. I find that a sentence of 7 years on each limb was excessive, the Appellant having pleaded guilty to the crime committed. I therefore set aside the sentence in Count II and I substitute it with a sentence of Three (3) years imprisonment, on each limb.

15. As for Count III I agree with Respondent's submission that the damage to the house occurred during the commission of the offence of housebreaking in Count II. The Appellant should not have been charged with the third count as it amounts to duplication of the charges. For that reason, I acquit the Appellant of the charge in Count III.

16. In the end the Appeal partially succeeds as follows:-

Count I –Seven (7) years imprisonment.

Count II – 1st limb three (3) years imprisonment.

2nd limb three (3) years imprisonment.

17.The sentence will commence on 11/10/2023 and the sentences will run concurrently. It is so ordered.

Delivered, Dated and Signed at Kapenguria this 29th day of **October, 2025**

**R. WENDOH
JUDGE**

Judgment delivered in the presence of:-

Mr. Majale for the State

Appellant – Present (virtually)

Juma/Hellen – Court Assistants