



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPEAL NO. E079 OF 2024**

**SEBASTIAN  
KITHOKOI.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPON  
DENT**

*(Being an Appeal against the judgment by Hon Andayi in Machakos  
Chief Magistrate's Court in Cr. case No. E297 of 2022 Delivered on  
14<sup>th</sup> November, 2022)*

**BETWEEN**

**REPUBLIC .....PROSECUT  
OR**

**VERSUS**

**SEBASTIAN KITHOKOI.....ACCUSED**

**JUDGMENT**

**BACKGROUND**

1.The Appellant herein **Sebastian Kithokoi** was charged with the offence of stealing stock contrary to **Section 278 of the Penal Code**, the particulars of the offence being that on the 26<sup>th</sup> October 2022 at Kitange Village, Mwala Sub- County within Machakos County stole 3 goats valued at kshs 18,000 the property of Hilda Katunge Muiya.

2. He faced an alternative charge of handling stolen goods contrary to section 322 (1) as read with section 322(2) of the Penal Code whose particulars were that on the 26<sup>th</sup> October 2022 at Kitange Village, Mwala Sub- County within Machakos County, otherwise than in the course of stealing he dishonestly retained three goats knowing them to be stolen goods.
3. The appellant pleaded guilty to the and was sentenced to 12 years imprisonment with hard labour.

**APPEAL:**

4. Aggrieved by the Judgment the appellant preferred this appeal which according to the Amended Petition is premised on the following grounds;
  - 1) ***That the Learned Magistrate erred in matters of law and facts by failing to explain to him the consequences of pleading guilty.***
  - 2) ***That the Learned Magistrate erred in law and fact by giving a harsh sentence bearing in mind the appellant pleaded guilty at the trial.***
  - 3) ***That the Learned Magistrate erred in law and fact in by failing to consider his mitigation.***
5. The Appeal was canvassed by way of written submissions.
6. The appellant submitted the plea of guilt was equivocal, entered under coercion, fear and misinformation and was in violation of his constitutional rights.
7. The appellant placed reliance on the case of **Elijah Njihia Wakianda vs Republic, Njuki vs Republic [1985], Antony Muthonga Munene vs Republic [2022] eKLR, Alexander Lukoye Malika vs Republic [2015] eKLR.**

8. The appellant also contended that he was denied a right to a fair trial as he was not supplied with witness statements to enable his prepare a proper defence
9. In regard to the sentence he submitted that the sentence of 12 years with hard labour was harsh and excessive and also failed to take into account the mitigating factors.
10. He urged this court to quash the conviction and set aside the sentence or in the alternative to reduce the sentence with due consideration being given to the period already served.
11. The respondent on the other hand submitted that the appellant was charged with an offence that carries a maximum sentence of 14 years and the court was not obligated to warn the appellant of the consequences of pleading guilty in such cases. Learned Prosecution Counsel also submitted that the sentence meted was appropriate being that the appellant was a repeat offender.

### **DETERMINATION**

12. The appellant in this case pleaded guilty to the charge and under Section 348 of the Criminal Procedure Code the appellant would ordinarily have no right of appeal save to the legality and extent of the sentence. However, this court is obligated to determine whether the plea was unequivocal as an equivocal plea would be a nullity. It would also be a violation of the right to fair hearing which this court should jealously guard being a right which is not derogable.

13. The steps to be followed when taking plea and the test of whether or not such a plea is unequivocal were laid in the classical case of **Adan v Republic [1973] EA 445, where** the Court of Appeal stated-

**“(i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;**

**(ii) the accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded;**

**(iii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;**

**(iv) if the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered;**

**(v) if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused’s reply should be recorded.”**

14. Applying the above test to this case it is my finding that the plea was properly taken and that it is an unequivocal plea of guilty. The charge and every element of the offence were explained to the appellant in a language he understood. The facts were then read to him and this after he intimated that he wished to maintain his guilty plea. He then admitted the facts and was found guilty and convicted. The learned magistrate observed the steps in the case of Adan v

Republic and cannot be faulted in any manner. It is noteworthy that the plea was not taken on the first day the accused was arraigned but on the fourth day because he asked to be taken to hospital first a request which was acceded by the court. His claim that he was coerced to admit the offence cannot therefore be true. Indeed, in his mitigation he reiterated that he had pleaded guilty because he had done it. In his own words he stated;

**“I am grateful for the proceedings. I pray for a non-custodial sentence. I have no parents and I am the sole bread winner for(sic) family. I am a hustler. I do domestic jobs. I did not go to school. What is bad is to deny what one has done and to repeat. I am sorry.” ( emphasis mine)**

15. For the above reasons I find that the plea was unequivocal and the plea on conviction cannot stand.

16. On the sentence it is contended that the same was harsh given that the appellant was a first offender and his mitigation. From the record the learned magistrate imposed the sentence of imprisonment for twelve years because the appellant was a repeat offender. According to the probation report he had been convicted in four other cases. That notwithstanding, the magistrate ought to have also taken into account that the appellant had pleaded guilty and that the stolen livestock was recovered. I agree with the appellant that the sentence of twelve years was harsh and excessive. I have considered the circumstances of the case and the appellant’s antecedents and have reduced the sentence to one of imprisonment for six years.

17. The appeal therefore succeeds only to the extent that the sentence imposed by the learned magistrate is set aside and its place shall be a sentence of imprisonment for six years.

Orders accordingly.

**Judgment, signed, dated and delivered virtually on this 4<sup>th</sup> day of December 2025.**

**E N MAINA  
JUDGE**

ORIGINAL