

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL APPEAL NO. E035 OF 2025

DOMINIC NYAA MAUNDO.....
ACCUSED

VS

REPUBLIC.....
PROSECUTION

(Being an appeal against the conviction and sentence of Hon. R. Lemayan(RM) delivered on 6-10-2025 in criminal case No.E454 of 2025 Garissa C.M'S court)

JUDGMENT

1. The appellant herein was charged with the offence of killing an animal with intent to steal contrary to section 289 of the Penal Code. The particulars being that on 08.09.2025 at around 1600hrs at Tana Bridge area in Garissa Township within Garissa County, he killed a She goat valued at Kes. 35,000/- the property of Abdallah Suleiman with intent to steal the carcass.
2. On his own plea of guilt, he was convicted and consequently sentenced to serve 5 years' imprisonment.
3. The appellant has now appealed against the sentence on the following grounds; -
 - i. **That the trial magistrate erred in law and fact by imposing an excessively harsh sentence in the given circumstances.**

- ii. **That the trial magistrate erred in law and fact by failing to consider his defence and mitigation when meting out sentence.**
 - iii. **That the trial magistrate erred in law and fact by convicting him and consequently sentencing him yet the prosecution did not prove its case to the required standard.**
4. The appeal was canvassed by way of written submissions.
5. The appellant filed undated submissions contending that when convicting, the court did not take into account the cultural circumstances under which the offence was committed. That he was forced to admit the offence by the complainant who is a police officer. That he had no legal representation hence disadvantaged. He urged that there was a grudge between his family and that of the complainant. He challenged the value of 35,000/= attached to the alleged stolen goat. He submitted that the sentence of five years was excessive.
6. The respondent on the other hand submitted that the plea was properly taken by the appellant having admitted the offence. That the conviction was lawful and the sentence meted out appropriate.
7. I have considered the appellant's grounds of appeal, his submissions and the opposing submissions by the prosecution. Issues for determination are;
 - i. **Whether the plea was equivocal; and**

ii. **Whether the sentence meted out was appropriate in the given circumstances?**

8. This being a first appeal, this court is guided by the principles set out in the case of **David Njuguna Wairimu vs Republic [2010] eKLR** where the Court of Appeal stated: -

“The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court.

There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.”

9. The procedure of taking a plea is clearly set out in **Section 207 of the Criminal Procedure Code** and which provision was expressed in the celebrated case of **Adan v Republic (1973) EA 445**. As a procedure, 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. The accused’s own words

should then be recorded and if they are an admission, a plea of guilty should be recorded.

10. 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. 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. If there is no change of plea, a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.
11. In the instant case, the appellant stated that the facts as read by the prosecution were true and that in mitigation, he sought for forgiveness. In reference to the foregoing, the plea cannot be considered as equivocal. It is my finding that the plea was properly taken hence unequivocal. On the basis that he was forced to plead guilty, there is no evidence and as such, the appellant has no right of appeal except on sentence.
12. Section 289 in respect of which the appellant was charged stipulates as follows:

Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence and is liable to the same punishment as if he had stolen the animal

13. The stolen animal was a goat whose punishment is provided under Section 268 of the penal for stealing stock which attracts a penalty of not exceeding 14 years imprisonment.
14. In this case, the trial court sentenced the appellant to 5 years' imprisonment while recognising the fact that the appellant has two previous convictions and further, that the court had considered the provision of section 333 of the Criminal Procedure Code.
15. Section 354 (3) (b) of the Criminal Procedure Code provides as follows on the powers of the Court on an appeal on sentence: -

“In an appeal against sentence, the court may increase or reduce the sentence or alter the nature of the sentence”.
16. The principles upon which an appellate Court will act in exercising its discretion to review or alter a sentence imposed by the trial court were settled in the case of **Ogolla s/o Owuor vs R, (1954) EACA 270** wherein the Court of Appeal stated as follows:

"The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors". To this, we would add a third criterion namely, "that the sentence is manifestly excessive in view of the circumstances of the case (R - v- Shershowsky (1912) CCA 28TLR 263)."
17. I am of the view that given that the appellant was convicted of killing an animal whose value was Kes. 35,000/-, the sentence of 5 years' imprisonment while lawful, was excessively harsh in the

circumstances. I must take judicial notice that the average price of an ordinary goat in the Kenyan market is not likely to be 35,000/=. The price is overrated.

18. The appellant was arrested on 22.09.2025 and sentenced on 06.10.2025 thus translating to a period of almost a month being already served. He pleaded guilty to the charge thus saving the court its precious judicial time. He is however a repeat offender hence deserving a deterrent sentence for meaningful-rehabilitation.
19. All factors put together and taking into account the value of the goat stolen, a sentence of 5 years is excessive hence substituted with three years imprisonment term. To that extent, the appeal on conviction is dismissed and that against sentence partially succeeds with the sentence of 5 years being substituted with three-years imprisonment.

ROA 14 days

Dated, signed and delivered this 26th day of February 2026

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J. N. ONYIEGO
JUDGE