

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HCCRA NO. E006 OF 2024**

**ERICK MUTINDA KIMANTHI .....**

**APPELLANT**

**-VERSUS-**

**REPUBLIC .....**

**RESPONDENT**

**(An appeal from the conviction and sentence in the SPM  
Magistrates Court at Makindu Criminal Case No. E724 of  
2022, Judgment delivered on by Hon. B. Ireri, SPM.)**

**JUDGMENT**

1. The Appellant was charged before the Senior Principal Magistrate's Court at Makindu in **Criminal Case No. E724 of 2022** with the offence of stealing stock contrary to **Section 278** of the **Penal Code**. The particulars were that on the 9<sup>th</sup> October, 2022 at Katulani Village in Kibwezi Sub-County within Makueni County, jointly with

another not before court, he stole one goat valued at Kshs.4,000/=, the property of the Complainant.

2. The record shows that the charge was read to the Appellant on 11<sup>th</sup> October, 2022 before Hon. B. Ileri (SPM). The Appellant responded in Kiswahili and pleaded guilty. The facts were thereafter outlined by the prosecution, to the effect that the Complainant discovered that her goat was missing, traced motorcycle tyre marks from her homestead, and later received information that the goat had been seen at a slaughterhouse at Siembeni area. The Appellant was found in possession of the goat, arrested and escorted to Kibwezi Police Station, where he was subsequently charged. Photographs were produced in evidence. Upon being called upon to respond to the facts, the Appellant admitted them as true.

3. The trial Court accordingly convicted the Appellant on his own plea of guilty. In mitigation, the Appellant sought forgiveness. The prosecution informed the court that the Appellant had a previous conviction in **Makindu Criminal Case No. 208 of 2020**, where he had been sentenced on 28<sup>th</sup> January, 2021 to serve three years'

imprisonment for the offence of housebreaking and stealing. The trial Court noted that the Appellant was a repeat offender and proceeded to sentence him, on 8<sup>th</sup> December, 2022, to five (5) years' imprisonment.

4. Being dissatisfied with both conviction and sentence, the Appellant filed the present appeal. In his Memorandum of Appeal dated 21<sup>st</sup> May, 2024, he challenges the conviction and sentence on, *inter alia*, the grounds that:

**a) That, I pleaded not guilty to the charges during trial.**

**b) That, the prosecution case is replete with monumental inconsistencies and contradictions which would have attracted acquittal verdict.**

**c) That, the trial court erred both in law and fact by failing to conduct holistic scrutiny of the whole evidence on record to base its conviction and sentence.**

**d) That, I can't recall all that transpired during trial hence plead to this Hon, Court to furnish me with lower court proceedings and judgment transcripts.**

***e) That, upon receipt of the transcripts do hereby pray that if need be I would be accorded leave to file additional, supplementary, substituted or either amended grounds of appeal pursuant to section 350(v) of the C.P.C***

**Submissions:**

5. The Appellant filed his brief undated submissions. Therein, he challenged the sentence only, contending that the five-year term was harsh and excessive, and sought a reduction or substitution with a non-custodial sentence.
6. He submitted that he had pleaded guilty and thereby saved the Court's time, and urged the Court to consider his personal circumstances, including that he came from a humble background, was youthful, and was remorseful.
7. He further submitted that he had maintained good conduct while in prison, had reformed, and was deserving of leniency, including consideration of the time already served.
8. He relied on ***Shiani v Republic [1972] EA 557, Republic v Malakwen Arap Kogo (1933) 15 KLR 115,***

*Republic v Seguja (1935) EACA 85, Francis Karioko Muruatetu v Republic*, and the South African decision in *State v Oscar Pistorius*, to submit that sentencing ought to balance mitigation, proportionality, and the objectives of punishment, including rehabilitation.

9. He ultimately prayed that the sentence be reduced, or that he be considered for a non-custodial sentence such as probation or a **Community Service Order**, and that he be set at liberty.
10. The Respondent, on its part, filed written submissions dated 22<sup>nd</sup> January, 2025.
11. It was submitted that the Appellant unequivocally pleaded guilty to the charge, the facts were read to him in a language he understood, and he admitted them without qualification. The conviction was therefore proper and lawful.
12. On sentence, the Respondent submitted that the offence of stealing stock contrary to section 278 of the Penal Code attracts a maximum sentence of fourteen years' imprisonment. The trial Court, having considered the circumstances of the case, the Appellant's mitigation, and the Sentencing Policy Guidelines, imposed a sentence

of five years' imprisonment, which was well within the law and not excessive.

**13.** The Respondent further submitted that the Appellant was not a first offender, having previously been convicted and sentenced in **Makindu Criminal Case No. 208 of 2020** for housebreaking and stealing. The trial Court properly took this into account and rightly treated the Appellant as a repeat offender.

**14.** It was also argued that the custodial sentence was justified in light of the prevalence of stock theft within the jurisdiction and the need to protect the community. Reliance was placed on the Sentencing Policy Guidelines, particularly the need to consider public protection, as well as the decision in *Benson Nkaramata Sakita v Republic [2018] eKLR*, where the Court emphasized the role of sentencing in protecting the public from further harm.

**15.** On proportionality, the Respondent submitted that the trial Court properly applied the Sentencing Policy Guidelines, noting that fifty percent of the statutory

maximum would be seven years, and the sentence of five years was therefore lenient after factoring in mitigation.

- 16.** Finally, the Respondent submitted that an appellate Court ought not to interfere with sentence unless it is illegal, based on wrong principles, or manifestly excessive. Reliance was placed on ***James v Republic (1950) 19 EACA 147*** and ***SKM v Republic [2021] eKLR***. It was urged that none of these grounds had been demonstrated, and the appeal should therefore be dismissed in its entirety.

**Analysis & Determination:**

- 17.** Having regard to the record, the issues for determination may be culled out as follows:

- a) Whether the plea of guilty was unequivocal**
- b) Whether the sentence imposed was lawful**

- 18.** Ground one of the Appellant's appeal seems to be predicated upon the idea that he pleaded not guilty to the charge. The procedure for taking plea is provided for

under **Section 207 (1) & (2)** of the **Criminal Procedure Code** as follows:

*“(1)The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement.*

*(2)If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:*

*Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.”*

**19.** In *Ombena v Republic [1981] eKLR*, the Court cited with approval the procedure established in *Adan v*

**Republic [1973] EA 445** for the recording of plea of guilty as follows:

***“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.”***

20. In *Titus Okumu Tito v Republic* [2015] eKLR, J.

A. Makau, J, cited and agreed with the court in *BGM HC Revision Application No. 744 of 2013, Abraham Waafula v Republic* in which the Court rendered itself thus:

*“The Start-line is when the trial Court enquires as to the language the accused understands and which he wishes to be used in the proceeding. That fact must be specifically recorded by the Court and the answer given therein, for it is a constitutional requirement under Article 50 and more specifically 2(b) and (m) of the constitution.....trial Court's should adopt the simple, clear and proper practice where an inquiry and to the language the accused understands is made and his presence recorded appropriately.”*

21. In *Okumu v Republic (Criminal Appeal E025 of 2023) [2024] KEHC 2618 (KLR) (11<sup>th</sup> March, 2024) (Judgment)*, S. Chirchir, J held that:

*“Where the accused is unrepresented, like it was in this case, it is the duty of the court is to*

***ensure that a plea of guilt is unequivocal. The trial court therefore should have taken the trouble to ascertain whether the Appellant understood the charges he faced.”***

22. In ***Farahat Ibrahim Ahmed & 2 others v Republic, High Court at Kisumu Criminal Appeal No. 68 of 2016***, the Court while citing ***Aden v Republic*** held that:

***“the danger of a conviction on an equivocal plea is obviously grievous where the accused is unrepresented, is of limited education and does not speak the language of the court”.***

23. Too, in ***Mbula v Republic (Criminal Appeal 061 of 2023) [2025] KEHC 11925 (KLR) (14<sup>th</sup> August, 2025) (Judgment)***, the Court stated:

***“It is incumbent upon a Trial Court, when recording a plea of guilty, to exercise meticulous care in ensuring that the charge is read and explained to the accused person in a language that he or she understands or is familiar with. Thereby enabling the Accused to***

***enter a proper and unequivocal plea. Where an accused pleads guilty, the Trial Court must record the response given in the exact words used by the Accused. The subsequent reading of the facts of the case serves the critical function of confirming that the plea was indeed unequivocal and that the Accused fully comprehended the nature of the charge and its essential elements.***

***The narration of facts by the prosecution enables the Trial Court to satisfy itself that the plea of guilty is both voluntary and unequivocal. That the Accused understands the facts to which he is pleading guilty and raises no defence thereto. A plea is considered unequivocal where, upon the charge being read and a guilty plea entered, the facts are then narrated and the Accused is asked to confirm or dispute the same. It is imperative that both the statement of the offence as contained in the charge sheet and the facts as narrated disclose***

*the offence charged; otherwise, the plea cannot be said to be unequivocal. A conviction may only follow where the facts as narrated by the prosecution are consistent with and support the offence charged.”*

24. Similarly, in *Ombena v Republic (supra)* the Court emphasized:

*“We are aware of how busy magistrates and judges are in this part of the world and it may be that the record does not do full justice to the proceedings as they were conducted. However, we have to judge by the record as it is. In this case we are not satisfied that the pleas of the appellants can be safely accepted as unequivocal pleas of guilty, or that the convictions can safely be allowed to stand.”*

25. Turning to the record of the trial court, the coram of 11/10/2022 appears as follows:

*“11/10/2022*

*Before Hon. B. Ileri - SPM*

*Prosecutor: C. Ngari*

***Court Assistant: Khadija***

***Accused 1: present.***

***Accused 2: present.***

***Consolidated charge sheet read to the accused persons who states.***

***1<sup>st</sup> accused: Ni ukweli***

***Plea of guilty entered.***

***Second accused: Si ukweli.***

***Plea of not guilty entered.”***

**26.** The facts were then outlined by the prosecution, after which the Appellant responded:

***“Maelezo ni ya ukweli.”***

**27.** The Court then recorded a conviction on the Appellant’s own plea of guilty. From the record, therefore, the Appellant responded in Kiswahili both at the stage of plea and upon narration of the facts. His responses, “Ni ukweli” and “Maelezo ni ya ukweli,” were recorded verbatim by the trial Court.

**28.** The facts as narrated disclose the offence of stealing stock as charged, and the Appellant did not raise any dispute, explanation or qualification. There was no

change of plea at any stage. In the circumstances, and guided by the foregoing authorities, the plea recorded by the trial court meets the threshold of an unequivocal plea.

29. It would appear that the Appellant, being alive to the position that an appeal does not ordinarily lie against a conviction founded on a plea of guilty, has cast his net wider by alleging contradictions in the “evidence adduced” and failure by the trial Court to evaluate the same. This line of attack is plainly misconceived.

30. The Court in ***Alexander Likoye Malika v Republic [2015] eKLR*** expressed this view in the terms:

**“May we, by way of commentary only remind that there is ordinarily no appeal against conviction resulting from a plea of guilty - See Section 348 of the Criminal Procedure Code which only permits an appeal regarding legality of sentence. A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous, or unfinished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person**

*pleaded guilty as a result of mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no offence known to law. Also where upon admitted facts the appellant could not in law have been convicted of the offence charged.”*

**31.** The Appellant pleaded guilty, and no trial was conducted. Consequently, no evidence was adduced in the strict sense, and there was nothing for the trial court to evaluate. The grounds advanced in that regard are therefore misguided and without basis on the record.

**32.** As to whether the sentence was excessive, the Appellant was convicted of the offence of stealing stock contrary to **Section 278** of the **Penal Code**. The **Section** provides that an offender is liable to imprisonment for a term not exceeding fourteen years.

**33.** The trial Court sentenced the Appellant to five (5) years' imprisonment. This sentence is clearly within the law. The principles upon which an appellate court may

interfere with sentence are settled. As stated in ***James v Republic (1950) 19 EACA 147:***

***“it is evident that the judge has acted upon some wrong principles or overlooked some material factor. To this, we would also add a third criteria, namely that the sentence is manifestly excessive in view of the circumstances of the case”***

**34.** The record shows that the trial Court took into account both mitigating and aggravating factors. The Appellant mitigated and sought forgiveness. However, the prosecution informed the court, and the Appellant confirmed, that he had a previous conviction in **Makindu Criminal Case No. 208 of 2020**, where he had been sentenced to three years’ imprisonment for housebreaking and stealing. The trial Court thus correctly treated him as a repeat offender.

**35.** The trial Court further noted the prevalence of the offence within its jurisdiction. This is a relevant consideration under the Sentencing Policy Guidelines, particularly the need to protect the community.

**36.** In the circumstances, the sentence of five years' imprisonment cannot be said to be excessive. It is, in fact, below half of the maximum sentence provided by law, and reflects that the trial Court took into account the Appellant's mitigation.

**37.** There is nothing on record to suggest that the trial Court acted on wrong principles, overlooked any material factor, or imposed a sentence that is manifestly harsh or excessive. Accordingly, there is no basis upon which this Court can interfere with the sentence imposed.

**Disposition:**

**38.** Consequently, the Appellant's appeal hereby fails. The conviction and sentence of the trial court are hereby upheld.

**39.** Orders accordingly.

**DATED, DELIVERED and SIGNED at NAIROBI** through the Microsoft Teams Online Platform on this **13<sup>TH</sup>** day of **APRIL, 2026.**

.....

**HON. C. KENDAGOR**

**JUDGE**

**In the presence of:**

Court Assistant: Beryl

Appellant - Absent (completed sentence and was released)

Ms. Musango, ODPP

JUDGMENT