REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CRIMINAL APPEAL NO. E019 OF 2025

JOHN MUTERO WACHIURI……. APPELLANT

VERSUS

REPUBLIC……. RESPONDENT

(From the original conviction and sentence in Criminal cases Nos. E016 of 2023 at the Senior Principal Magistrate's Court at Engineer by Hon. H.O. Barasa–Senior Principal Magistrate)

JUDGMENT

1. John Mutero Wachiuri, the appellant herein, was convicted after pleading guilty to the offences of stealing stock contrary to section 278 of the Penal Code
2. The particulars of the offence in count one are that on September 19, 2023, at Mkungi area, North Kinangop sub-County, within Nyandarua County, he stole a freshian cow valued at Kshs. 70,000.00, being the property of Joseph Kamau Gachuria.
3. In count two, the particulars of the offence in count two are that on January 16, 2023, at Mkungi area, North Kinangop sub-County, within Nyandarua County, he stole a freshian cow valued at Kshs. 80,000.00, being the property of George Matu Mbugua.
4. The particulars of the offence in count three are that on November 22, 2023, at Mkungi area, North Kinangop sub-County, within Nyandarua County, he stole a freshian cow valued at Kshs. 80,000.00, being the property of George Matu Mbugua.
5. In count four, the particulars of the offence in count one are that on June 17, 2023, at Mkungi area, North Kinangop sub-County, within Nyandarua County, he stole a freshian cow valued at Kshs. 60,000.00, being the property of Peninah Njeri Koigi.
6. Whereas in count five, the particulars of the offence in count one are that on January 11, 2024, at Gathiriga area, Kipipiri sub-County, within Nyandarua County, he stole a freshian cow valued at Kshs. 70,000.00, being the property of Peter Macharia Chomba.

7. The appellant was sentenced to one year's imprisonment on each count. The sentences were ordered to run consecutively. He was aggrieved and filed this appeal against the conviction and the sentence. He raised grounds of appeal as follows:
    a) The learned trial magistrate erred in fact and in law in convicting the appellant based on a defective charge sheet.
    b) The conviction and sentence by the court was/is irregular, illegal, null and void as the charge sheet presents errors with regard to the name of the accused.
    c) The prosecution ought to have corrected the error earlier in the trial that the conviction and sentence have occasioned a miscarriage of justice.
    d) The sentence metered out by the trial court was excessive in obtaining. Circumstances.
    e) The trial court erred in fact and in law in giving a harsh and excessive sentence, yet the said offences were committed in the same transaction, having been committed on the same day. The sentence ought to run concurrently and not consecutively
8. The respondent, represented by M/s Vena Odero, opposed the appeal. She argued that the prosecution met the required evidentiary standards and that the sentence was appropriate for the offence.
9. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of **Okeno vs the Republic [1972] EA 32.**
10. Although the appellant claimed that the charges were defective, this allegation was baseless.
11. In the leading case of **Joseph Marangu Njau v Republic [2015] eKLR,** the Court of Appeal stated:

> **Whereas all the perils a guilty pleader embraces may not much matter in petty offences or in mere infractions which do not present much risk to life or liberty, much is at stake in the offences that attract more severe penal consequences. In the case before us, the balance of the appellant's natural life stood to be spent behind bars upon conviction.**
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> **Cognizant of the ever-present dangers of misjustice** *[sic]* **in guilty pleas, the courts have been vigilant to act upon and to uphold them only when they are clear, express, unambiguous and unequivocal. When a plea of guilty is challenged as not having been entered unequivocally, it becomes a matter of law that permits the superior**

courts to entertain appeals notwithstanding Section 348 of the CPC aforesaid. The predecessor of this Court considered and authoritatively laid down the manner in which pleas of guilty should be recorded and the steps which should be followed, in the decades-old case of Adan vs Republic [1973] EA 445, 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 raise any question of his guilt, his reply must be recorded and a 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."***

In this appeal, I will endeavour to determine whether the plea-taking in the four cases complied with the procedure outlined in Adan (supra).

12. The appellant asked for the charges to be read to him after PW1's testimony. He pleaded guilty, and upon the reading of the facts, he confirmed them as true and accurately stated. These facts supported the charge.
13. I, therefore, find that the appellant's plea in all five counts was unequivocal.
14. Section 348 of the Criminal Procedure Code provides as follows:

> **No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.**

15. Having established that the plea was correctly recorded, I will therefore endeavour to verify the legality of the sentence, bearing in mind that an appellate court would only interfere with the trial court's sentence when sufficient circumstances exist that justify varying the trial court's order. These circumstances were well illustrated in the case of **Nillson vs Republic [1970] E.A. 599,** as follows:

> **The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the**

mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a tri

al Judge unless, as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R vs SHERSHEWSITY (1912) C.CA 28 T.LR 364.

16. The offences the appellant was charged with were committed on different occasions. They did not form the same transaction, so the court could order the sentences to run concurrently.
17. Section 14 (1) of the Criminal Procedure Code provides:

Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

18. The appeal against the conviction is dismissed for want of merit.

19. **Delivered and signed at Nyandarua, this 28th day of April 2026**

KIARIE WAWERU KIARIE

JUDGE