



**Opon v Republic (Criminal Appeal E005 of 2022)  
[2024] KEHC 3975 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3975 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL APPEAL E005 OF 2022  
RE ABURILI, J  
APRIL 24, 2024**

**BETWEEN**

**TOM OTIENO OPON ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Senior Principal  
Magistrate's Court Criminal Case No. E610 of 2021 at Nyando)*

**JUDGMENT**

1. The Appellant is Tom Otieno Opon. He was convicted on his own plea of guilty for the offence of stealing stock contrary to Section 278 of the Penal Code on 29<sup>th</sup> June 2021 and sentenced to serve six (6) years imprisonment.
2. He appealed vide Petition of Appeal dated 27<sup>th</sup> January 2021 filed on 21<sup>st</sup> February 2022 with leave of court enlarging time vide Misc. Criminal Application No. E071 of 2021 granted on 26<sup>th</sup> January 2022.
3. In the Memorandum of Appeal aforesaid, he challenges both conviction and sentence.
4. This appeal was admitted to hearing on 18<sup>th</sup> March 2024 and when the matter came up for mention on 16<sup>th</sup> April, 2024, the Appellant sought leave of court to withdraw his appeal against conviction and pursue sentence reduction only.
5. The court allowed the withdrawal of the said appeal. He then submitted that he pleaded guilty and was remorseful that he stole the goat to buy drugs which action he acknowledges was wrong and seeks for forgiveness. The goat was recovered. That he regrets the theft, he has a wife and two (2) children and was in custody since his arrest in June 2021 until his conviction. That he is a first offender.
6. The prosecution counsel Mr. Marete left the issue of sentence to court.



7. I have considered the appeal against sentence and the mitigations.
8. The Appellant pleaded guilty to the charge and regrets the offence. He has been in custody since 28<sup>th</sup> June 2021. He was jointly charged with Walter Muga Ochieng whose appeal was allowed and a retrial ordered as his plea of guilty was equivocal.
9. From the charge sheet dated 29<sup>th</sup> June 2021, the Appellant was arrested on 28<sup>th</sup> June 2021 which is now close to three years by June 28<sup>th</sup> June 2021.
10. The value of the goat stolen was Kshs 5,000 which goat was recovered before it was consumed.
11. There is no justification for stealing stock which offence attracts heavy penalty.
12. However, from the mitigations by the Appellant, I am satisfied that he has learnt his lessons behind bars for close to 3 years and that he should be accorded a chance to return to the society where he can hustle and eke a living and fend for his family. The Appellant was a first offender. No Presentence report was ordered to be filed by the trial court to appreciate his socio economic situation and his background and how he relates with the society and community generally. He claims that he needed money to buy his drugs because he is sick. One should not steal to fend for themselves but the inequalities in this society are a reality that we must all come to terms with that indeed, some offences are committed due to poverty and the need to survive like all others. Measures should be put in place to ensure that the gap between the rich and the poor is not as wide as it is leading to the haves and those without hence the reaction by those without.
13. I find that the period that the Appellant has served in prison from the date of his arrest on 28<sup>th</sup> June 2021 is adequate punishment for stealing a goat.
14. Therefore, unless otherwise lawfully held, the Appellant Tom Otieno Opon is hereby set at liberty forthwith.
15. Should he not abide by the law, the long arm of the law will still catch up with him.
16. Signal to issue.
17. I so order.
18. This file is closed.

**Dated, Signed and Delivered at Kisumu this 24<sup>th</sup> Day of April, 2024**

**R. E. ABURILI**

**JUDGE**

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