



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITUI**

**CRIMINAL APPEAL NO. 64 OF 2016**

**JACOB MUTISYA MUNYOKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal from Original Conviction and Sentence in Mwingi Senior Resident Magistrate's Court*

*Criminal Case No. 357 of 2015 by Hon. K. Sambu P M on 17/12/15).*

**J U D G M E N T**

1. **Jacob Mutisya Munyoki**, was charged, convicted of the offence of **Stealing Stock** contrary to **Section 278** of the **Penal Code** and sentenced to **five (5) years imprisonment**.

2. Being satisfied with the conviction he now mitigates on sentence. In his written submissions he urged that he was a sole bread winner of his family; he has upgraded spiritually through a Department of Spiritual Reformation and now he is an Ambassador of Christ; the period he was held in custody prior to being sentenced was not considered; he will be a good member of the community and he is ready to carry on the newly found virtues to the society if given a second chance.

3. The State through learned Counsel, **Mr. Mamba** opposed the Appeal on grounds that the Appellant did not state why he required review of the sentence and he was not remorseful.

4. Sentence is a matter of discretion. An Appellate Court would ordinarily not interfere with sentence unless it is demonstrated that the Court acted on a wrong principles or took into consideration irrelevant consideration or if the sentence is excessive. This was well put in the case of **Bernard Kimani Gacheru vs. Republic Criminal Appeal No. 188 of 2000** where the court of Appeal stated thus:

*“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”*

5. A person who steals a bull is liable to imprisonment for a period not exceeding **fourteen (14) years**. The value of the bull that was stolen was **Kshs. 35,000/=**.

Section 333(2) of the Criminal Procedure Code provides thus:

*“(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.*

*Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”*

6. The Appellant was sentenced to **five (5) years imprisonment**. He has so far served **three (3) years imprisonment**. He was in remand custody for **six (6) months** prior to being convicted. Considering the fact that he was a first offender and described by the trial Court as a youth, I do set aside the sentence meted out and substitute it with the term served. He shall be set at liberty unless otherwise lawfully held.

7. It is so ordered.

**Dated, Signed and Delivered at Kitui this 19<sup>th</sup> day of December, 2018.**

**L.N. MUTENDE**

**JUDGE**



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