



Case Number:	Criminal Appeal No.341 Of 2002
Date Delivered:	01 Dec 2004
Case Class:	Criminal
Court:	High Court at Kisii
Case Action:	-
Judge:	Kaburu Bauni
Citation:	Okiri v Republic [2004] eKLR
Advocates:	-
Case Summary:	Criminal Practice - penology - sentencing - 8 year jail term found excessively harsh on the charge of stock theft (three goats) for a first offender - conviction quashed and set aside.
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL APPEAL NO.341 OF 2002

(From original conviction and sentence of the Resident Magistrate's Court at Oyugis in Criminal Case No.522 of 2002 –N. NJAGI ESQ., S.R.M)

DUNCAN ONYANGO OKIRI APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

Appellant was convicted by Senior Resident Magistrate Oyugis for the offence of stealing stock contrary to section 278 Penal Code. He pleaded guilty and was sentenced to 8 years imprisonment.

His appeal is against sentence only. However the learned Senior State Counsel in conceding the appeal pointed out that the plea was equivocal as facts were never read to the appellant. I quite agree. The learned magistrate took the plea in the most casual manner. The charge was a serious one and the sentence meted out long.

Record shows that after reading the charge to the appellant and recording a plea of guilty the magistrate recorded: "**FACTS** R.A.P.C.5." That is not a proper way of recording facts. The prosecution should have read the facts to the appellant who should have been asked if he agreed with them or not. On that note alone the appeal will succeed.

The above aside the sentence meted out was excessive. Appellant was alleged to have stolen 3 goats worth shs.2,900/=. He was a first offender and pleaded for leniency. Sentence of 8 years imprisonment was excessive and harsh in the circumstances.

I allow the appeal quash the conviction and set aside the sentence. Appellant be set at liberty forthwith.

Dated 1st December 2004

KABURU BAUNI
JUDGE



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