



Case Number:	Criminal Appeal 34 of 2011
Date Delivered:	07 Dec 2011
Case Class:	Criminal
Court:	High Court at Eldoret
Case Action:	Judgment
Judge:	Festus Azangalala
Citation:	ABDALLA MARITIM v REPUBLIC [2011] eKLR
Advocates:	-
Case Summary:	..
Court Division:	Criminal
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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during the nights of 24<sup>th</sup> May, 2010, and 25<sup>th</sup> May, 2010, at Kipsangui village within Eldoret West District of the Rift Valley Province, stole one cow valued at Kshs 35,000/=, the property of **Checkley Tirop Soo**, (hereinafter “**the complainant**”).

In the facts stated by the prosecution, the complainant is said to have locked her Fresian cow in its shed the evening of 24<sup>th</sup> May, 2010. The next morning, i.e. 25<sup>th</sup> May, 2010, she found the cow missing. She informed her neighbours and a search was mounted. She also reported the theft to Ziwa Police Post.

The same day, the appellant was seen at Tambayot village with the stolen cow. Police officers were called and they arrested the appellant after the cow was identified by the complainant. The appellant was then charged as already stated.

The appellant admitted those facts and was accordingly convicted on his own plea of guilty. The prosecution then informed the court that he was a first offender.

In mitigation, the appellant asked for forgiveness. He also told the court that he has children who rely on him and further that his wife was unwell.

The learned Senior Resident Magistrate considered the offence serious and after regarding the appellant's mitigation imposed the five year imprisonment upon him. The appellant was dissatisfied with the sentence and has appealed to this court against the same on the main ground that his mitigation was not appreciated by the learned Senior Resident Magistrate resulting in him imposing an excessive sentence.

**Mr. Chirchir**, the learned Senior State Counsel who represented the respondent State opposed the appeal. In his view, the appellant deserved the sentence.

The record shows that the appellant was a first offender and pleaded guilty to the charge. The record further shows that the stolen animal was recovered. The complainant therefore lost nothing save for the anxiety she suffered for the period she looked for her cow which period was not prolonged because the cow was recovered the next day after the theft. The appellant is remorseful and says he deeply regrets committing the offence. In those premises, I have come to the conclusion that the learned Senior resident magistrate may not have fully appreciated the appellant's circumstances. I will therefore interfere with the sentence imposed upon the appellant. His appeal against sentence is accordingly allowed. The sentence of five (5) years imprisonment is hereby set aside. The appellant has served slightly over 1½ years imprisonment. In my view, he has learnt his lesson. I substitute the sentence of

five years imprisonment with a sentence of imprisonment for the period already served. The appellant should therefore be released forthwith unless he is otherwise lawfully held.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS**

**7<sup>TH</sup> DAY OF DECEMBER, 2011.**

**F. AZANGALALA**

**JUDGE**

***Read in the presence of:-***

**Abdalla Maritim**, the appellant and **Mr. Kabaka** for the State.

**F. AZANGALALA**

**JUDGE**

**7/12/2011.**



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