



Case Number:	Criminal Appeals 126 of 1983
Date Delivered:	06 Dec 1983
Case Class:	Criminal
Court:	Court of Appeal at Kisumu
Case Action:	Judgment
Judge:	Zakayo Richard Chesoni, Harold Grant Platt, Alan Robin Winston Hancox
Citation:	Rotich v Republic [1983] eKLR
Advocates:	-
Case Summary:	<p style="text-align: center;"><b>Rotich v Republic</b></p> <p style="text-align: center;">Court of Appeal, at Kisumu December 6, 1983</p> <p style="text-align: center;">Hancox JA, Chesoni &amp; Platt Ag JJA</p> <p style="text-align: center;">Criminal Appeal No 126 of 1983</p> <p><b>Appeal</b> - second appeal - matters with which a court is concerned in such appeal- whether severity of sentence a matter of law - whether court has jurisdiction to enter into the question of sentence on second appeal.</p> <p><b>Pleas</b> - change of plea - plea of guilty - statement of accused in mitigation that he committed the offence under influence of alcohol – whether accused's statement could detract from unequivocal nature of plea - interpretation of such a plea.</p> <p><b>Sentencing</b> - legality of sentence - for offence of stock theft - sentence not stated to include hard labour - sentence including order for police supervision - appellant a first offender - whether sentence containing an error of law - proper sentence.</p>

	<p>The appellant was convicted of the offence of stealing after he had admitted the facts stated by the prosecutor and he was sentenced to seven years' imprisonment, corporal punishment and a five-year reporting order. The appellant's appeal to the High Court was dismissed and he appealed to the Court of Appeal stating, inter alia, that he had committed the offence while under the influence of alcohol.</p> <p><b>Held:</b></p> <ol style="list-style-type: none"> <li>1. Under section 361(1) of the Criminal Procedure Code (cap 75) an appeal lies to the Court of Appeal on a matter of law, and severity of sentence is therein stated not to be a matter of law and the court therefore had no jurisdiction to enter into the question of sentence.</li> <li>2. The appellant had validly pleaded guilty to the offence and even though he said he had committed it while under the influence of alcohol that did not detract from the unequivocal nature of the plea.</li> <li>3. The appellant's sentence contained an error of law in that it was not expressed to have been imprisonment with hard labour as required by section 278 of the Penal Code (cap 63).</li> <li>4. Another error on the sentence was that it made the appellant liable to a police supervision order whereas he was a first offender.</li> </ol> <p><i>Appeal dismissed.</i></p> <p><b>Cases</b></p> <p><i>Nashom Marenya v Republic</i> Criminal Appeal 23 of 1982 (unreported)</p> <p><b>Statutes</b></p> <ol style="list-style-type: none"> <li>1. Criminal Procedure Code (cap 75) section 361(1)</li> <li>2. Penal Code (cap 63) section 278</li> </ol>
Court Division:	Criminal
History Magistrates:	-

County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM:HANCOX JA, CHESONI & PLATT AG JJA)**

**CRIMINAL APPEAL NO 126 OF 1983**

**ROTICH .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

This is a second appeal from the decision of the High Court at Kisumu, which dismissed an appeal from a sentence passed upon a conviction for stock theft by the senior resident magistrate at Kisii, save that for some reason the sentence of corporal punishment passed upon the appellant was reduced from five strokes to one stroke. Under section 361(1) of the Criminal Procedure Code, an appeal lies only to this court on a matter of law, and severity of the sentence is expressly stated thereunder to be not a matter of law, but of fact, so we have no jurisdiction to enter into the question of the sentence in this appeal. The appellant in our view validly pleaded guilty to the offence of stealing stock contrary to section 278 (not 278A) of the Penal Code and received the statutory minimum sentence of seven years' imprisonment, the corporal punishment just stated and five year reporting order. He admitted the facts stated by the prosecutor. Even though he said in mitigation, and in both his memoranda of appeal, that he committed the offence while under the influence of alcohol, this did not in our judgment, in any way detract from the unequivocal plea of guilty which the appellant made. Consequently there exists no ground for saying that the magistrate wrongly accepted the plea or that he misconstrued it as one of guilty, which would alone have been a matter of law: see as to this point *Nashom Marenya v Republic*, Criminal Appeal (Nairobi) 123 of 1982. However, the sentence should have been expressed to have been imprisonment with hard labour, as the section requires and to this extent the sentence contained an error of law.

We therefore substitute for the custodial sentence as expressed by the magistrate, a sentence of seven years' imprisonment with hard labour. The second error was that as a first offender, the appellant was not liable to a police supervision order. In the result we alter the conviction to be expressed as under section 278 of the Penal Code and order that the sentence on the appellant be seven years' imprisonment with hard labour. The police supervision order is set aside. Otherwise the appeal to this court is dismissed.

Dated and Delivered at Kisumu this 6<sup>th</sup> Day of December, 1983

**A.R.W. HANCOX**

.....

**JUDGE OF APPEAL**

**Z.R. CHESONI**

.....

**JUDGE OF APPEAL**

**H.G. PLATT**

.....

**Ag JUDGE OF APPEAL**



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)