



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**CRIMINAL APPEAL NO. 111 OF 2017**

**[FORMERLY NAKURU HCCRA NO. 117 OF 2016]**

**KIPCHUMBA LAGAT ALIAS PATRICK.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original conviction and sentence of the Principal Magistrate's Court at**

**Eldama Ravine Cr. Case no 33 of 2016 delivered on the 13<sup>th</sup> day of July, 2016 by Hon. M. Kasera, PM]**

**JUDGMENT**

1. The appellant was convicted for stock theft contrary to section 278 of the Penal Code and sentenced to 4 years imprisonment on 13/7/16. He was released on bail pending appeal on 23/11/2016.

2. I have considered the evidence presented before the trial Court and I find it when weighed against the accused's unsworn statement to overwhelming support a finding of guilt on the principle of the doctrine of recent possession. The appellant was found in his possession at his land with a cow which was stolen from the Kenya Agricultural Training Centre (F.T.C), Koibatek only 2 days earlier and this allegation of having reported the finding of the cow on his land was shown to have been done to Assistant Chief Pw3 only after the presence of the cow on his shamba had been discovered by Pw2, the herdsman who identified the cow and the area chief Pw4 to whom he said had been reported by the Assistant Chief Pw3. The subsequent reporting of the alleged finding of the cow on his shamba, was the appellant's attempt to get out of the theft case following the discovery of the cow on his land. The appellant's plea that he had been framed was not supported by any evidence of a grudge and therefore did not raise any doubt to the prosecution's evidence.

3. Consistent with the principles of review of sentences in *Wanjema v. R* (1971) EA 493, I find that the offence of theft of one cow shown in the particulars of the offence to have been valued at Ksh. 65,000/= was in this case punished by an excessive sentence of 4 years imprisonment. An imprisonment term not exceeding 3 years should have been sufficient.

**Orders**

4. Accordingly, for the reasons set out above, in exercise of the powers of the appellate Court under section 354 (3) (b) of the Criminal Procedure Code while dismissing the appeal from conviction for the offence of stock theft contrary to section 278 of the Penal Code, considers the appropriate sentence therefor to be imprisonment for a term not exceeding 3 years.

5. However, in view of section 3 of the Community Service Order Act, the Court directs the Probation Officer to prepare a pre-sentence report for consideration by the Court before sentencing on 4/2/19.

*Order accordingly.*

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF JANUARY 2019**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent