

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 13 OF 2017

WILLIAM ATIMA NYANGARO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. S.N Makila – RM dated 8th December, 2014 at the Chief Magistrate’s Court at Kisii in Criminal Case No. 3352 of 2014)

JUDGMENT

1. WILLIAM ATIMA NYANGARO pleaded guilty to the offence of stealing stock contrary to section 278 of the Penal Code (Chapter 63 of the Laws of Kenya). The particulars were that on 14th November 2014 at Bogiakumu Sub-location, Kisii South District of Kisii County, he stole one cow valued at Kshs. 13000/= the property of ANDREW NYABOGA.

2. The accused pleaded guilty. In mitigation, the accused stated as follows:

“I ask for leniency. I have never committed an offence before. A certain old man sent me to pick the cow and take it to the market. I knew the complainant was the owner of the cow.”

3. In my view, the trial magistrate failed to consider whether in mitigation, the appellant was asserting a defence which rendered the plea of guilty equivocal.

4. I allow the appeal and quash the conviction and sentence. Since the appellant has been in prison for three (3) years, I decline to order retrial. The appellant is set free unless otherwise lawfully held.

Dated and delivered at Kisii this 24th day of July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.