



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO.138 OF 2014

PETER LOCHUCHU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 502 of 2013 of the Chief Magistrate's Court a Isiolo by Hon. J. M Irura – Ag. Principal Magistrate)

JUDGMENT

PETER LOCHUCHU, the appellant, was convicted for the offence of stealing stock contrary to section 268 as read with section 278 of the Penal Code.

The particulars of the offence were that on 9th July 2013 at Kiwanjani area, in Isiolo County, stole two head of cattle valued at Kshs.80000/= the property of **AGNES IYANE MALONG'O**.

The appellant was sentenced to serve 4 years imprisonment. The appeal is against both conviction and sentence.

The appellant was in person. He raised two grounds of appeal as follows:

1. That only three witnesses out of five listed were called.
2. That the learned trial magistrate erred in law and in fact by failing to reject the evidence of PW2.

The state opposed the appeal through Mr. Odhiambo, the learned counsel.

The facts of the prosecution case were briefly as follows:

When the complainant's cattle were grazing, two of them went missing. The appellant was found with them at his home area under suspicious circumstances. He was arrested and taken to Isiolo police station where the complainant identified them.

The appellant contended that he was arrested over a different issue. He denied any involvement in the offence.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC**

[1972] EA 32.

The prosecution does not need a certain number in order to prove its case. There are instances when some of the listed witnesses testify over the same issue. The prosecutor may opt to do away with repetitive witnesses. The only time a complaint can be raised is when a witness whose evidence may be in support of a fact in favour of an accused or may have evidence very different from other prosecution witnesses. This is not the argument in this case. The only issue that I will address my mind to is whether the evidence that was adduced proved the offence or not.

PW2 was **PC Harrison Nyamu**, a GSU officer who escorted the appellant to Isiolo police station after he was arrested by village elders with suspected stolen cattle. The appellant does not state why he wanted the evidence by this witness rejected. My perusal of the record does not disclose any.

Agnes Iyane Malong'o (PW1) testified that after she had learnt that her two cows were missing, she embarked on a search and reported to the police. As she was leaving Isiolo police station, she saw some cattle being brought in, in a lorry. She went and confirmed these were her two missing cows.

Joniso Ajiot (PW3) testified that he was a youth leader. On 9th July 2013 he was summoned home. This was after the appellant was seen grazing some two cows that were suspected to have been stolen. He went with some elders and arrested him with the cows and took him to a GSU camp. These were the cows that PW2 escorted to Isiolo police station together with the appellant.

The defence of the appellant amounted to mere denial and the learned trial magistrate was entitled to reject it.

There was overwhelming evidence on record against the appellant. The conviction was safe.

The sentence of four years cannot be termed as harsh. I will not disturb the same.

From the foregoing analysis of evidence, the appeal is dismissed for want of merits.

DATED at **MERU** this **28th** day of **April, 2017**

KIARIE WAWERU KIARIE

JUDGE