



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL APPEAL NO. 10 OF 2016**

**FRANCIS KANTI MACHARIA ..... APPELLANT**

*Versus*

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court Criminal Case No. 843 of 2013 by Hon. E. Bett Senior Resident Magistrate on 12<sup>th</sup> February 2016).*

**JUDGMENT**

1. **FRANCIS KANTI MACHARIA (Macharia)** was charged before the Chief Magistrate's Court Nanyuki alongside two of his co-accused with the **offence of stealing stock contrary to Section 278 of the Penal Code**. After trial Macharia's co-accused were acquitted whilst he was convicted as charged. He was sentenced to serve five (5) years imprisonment. He has filed this appeal against that conviction and sentence. The duty of this court as the first appellate court was stated in the case of **SIMIYU & ANOTHER V REPUBLIC (2005) KLR 192** as follows:-

**“It is the duty of the first appellate court to reconsider the evidence, evaluate it and draw its own conclusions in order to satisfy itself that there is no failure of justice. It is not enough for the first appellate court to merely scrutinize the evidence to see if there was some evidence to support the trial court's findings and conclusions.”**

2. As stated before Macharia and his co-accused were charged with the offence of stealing stock contrary to Section 278 of Cap 75. The particulars of the offence were that:-

**“On the 4<sup>th</sup> day of October 2013 at Jessel Ranching Company in Laikipia County within the Republic of Kenya jointly stole one bull valued at Kshs. 80,000 the property of Jessel Ranching Company.”**

The prosecution called a total of 7 witnesses.

3. **PETER M. JESSEL (PW 1)** stated that he was the owner of Suguri Ranch. He said that in that Ranch he reared livestock. He had in total 600 livestock. On 4<sup>th</sup> October 2013 whilst at Suguri Ranch he was informed by Simon Lukeria the herdsman that one of the bulls amongst his herd was missing. The loss of that bull was reported to the police on the following day. On that day the police in the company of PW 1 spent the day tracing the footprints of the bull without success. On the next day as PW 1 and the police officers were driving towards the Nanyuki police station when they came across the bull which was being driven by the second accused. The second accused informed them that he had been hired by the first accused to drive the bull to the slaughter house. PW 1 was able to testify on the branding which was on

that bull which helped him to identify the bull. He stated that that was the kind of branding that was done at the ranch. The first accused after being interrogated informed the police that he had purchased the bull from Macharia. Following that information the police sought and eventually arrested Macharia.

4. **PW 2 SIMON LUKERIA** stated that he was employed by Peter Joseph farm. He said that on the 4<sup>th</sup> October 2013 after he had taken animals of that farm to the forest to graze he discovered that one of the bulls was missing. He too confirmed that the loss of the bull was reported to the police and that the bull was eventually found in possession of the second accused who was taking the bull to the slaughter house on behalf of the first accused.

5. The other witnesses of the prosecution that testified in the case were the police officers who were involved in the investigation and eventual recovery of the bull.

6. Macharia by his appeal has raised 20 grounds of appeal although some are repetitive. He essentially faults the prosecution for failing to meet the criminal standard of proof. The learned counsel Mr. Bwononga indeed put up a spirited fight on behalf of Macharia by his submissions. He raised many issues relating to the discrepancies in the prosecution evidence. Notwithstanding those submissions I am of the view that this appeal will be determined on the single ground whether the prosecution adduced evidence as to the ownership of the bull which evidence proved the charge before the court.

7. The burden of proof lay on the prosecution to prove its case against Macharia beyond reasonable doubt. See the case **REPUBLIC V PHILEMON CHEMAS (2014)eKLR** where the court stated:-

**“An accused person assumes no burden to prove his innocence, and any defence or explanation put forward by the accused person is only to be considered on a balance of probability. The standard of proof placed on the prosecution is to prove the guilty of the accused person beyond reasonable doubt REPUBLIC v GACHANJA (2001) KLR 428.”**

8. **Section 267(3)** of the **Penal Code Cap 63** provides as follows:

**“Every tame animal whether a tame by nature or wild by nature and subsequently tamed, which is the property of any person is capable of being stolen.”** (*Underlining mine*)

It follows from that section the bull the subject of the charge in this case ought to have been the property of a person for it to be capable of being stolen. The particulars of the charge that Macharia faced at the Nanyuki Chief Magistrate’s Court stated that the bull was the property of Jessel Ranching Company. I have examined the entire evidence of the prosecution case and I have been unable to find anywhere that that evidence points to the bull belonging to Jessel Ranching Company. Indeed the prosecution’s evidence did not show as a fact that there is an entity in existence known as Jessel Ranching Company. PW 1 stated in evidence that the bull had gone missing from Suguri Ranch. Later in evidence PW 1 stated that the bull belonged to him.

9. It is clear from the above evidence that the prosecution failed to adduce evidence with regard to the owner of that bull. The prosecution failed to adduce evidence to show that the bull belonged to an entity called Jessel Ranching Company. It is because of that failure that the conviction and the sentence of Macharia cannot stand.

10. Since therefore the prosecution did not prove a case against **FRANCIS KANTI MACHARIA on the required standard of proof his conviction is hereby quashed and his sentence is hereby set aside. I order that he be released from custody unless he is otherwise lawfully held.**

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2016.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant – Njue

Appellant: Francis Kanti Macharia .....

For appellant: .....

For the State: .....

COURT

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**