



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL APPEAL NO. 93 OF 2013**  
***LESIT, J***

**WILSON NGUNJE.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The Appellant Wilson Ngunje was the second accused in the trial before Chief Magistrates Court Meru. The Appellant and his co-accused David Marsale were charged with one count of Robbery with violence contrary to section 296(2) of the Penal Code. They faced an alternative charge of handling stolen property contrary to section 322(2) of the Penal Code. They were each sentenced to 14 years imprisonment.
2. The two Appellants were dissatisfied by the conviction and sentence and each filed the respective appeals.
3. In an usual twist of fate the appeal by David Marsale was heard on 16<sup>th</sup> October 2013 and judgment delivered on 6<sup>th</sup> February 2014.
4. I have come across the Appellants appeal in normal session of admission and on noting the anomaly set down the appeal for hearing. I heard the appeal on 26<sup>th</sup> May, 2014, three days ago.
5. The Appellant was charged with David Marsale whose appeal was heard earlier. Since the trial out of which this appeal arose is the same as the one facing David Marsale, I adopt the judgment of Hon. Musyoka, J.
6. The prosecution's case against David was that he was found in possession of a rungu stolen from the complainant in the robbery with violence charge. The learned Hon. Musyoka J. allowed the appeal by David Marsale on the basis of insufficient evidence against him. For once the rungu allegedly recovered from David was not an exhibit before the court. The complainant did not therefore identify it. There was therefore no basis for the conviction.
7. There was other evidence against the Appellant and his co-accused which my learned brother did not mention. The two sold one sheep to PW3 at Timau one day after the robbery. The skins of the two sheep were identified by PW5 as those of two of his stolen sheep. They were also identified by PW1, the

one in whose custody the sheep were stolen.

8. I have perused the record and noted that PW1's evidence in regard to the sheep skin was "**at Nanyuki**". I was shown a skin of a sheep. This is the skin. PW5 the owner of the stolen sheep had this to say about the identification of the skin "**one skin was recovered from the butchery. I identified it as mine. This is the skin**".

9. Before an accused can be convicted of an offence based on possession or handling of stolen property, the prosecution must adduce evidence to prove that the alleged stolen property belongs to the complainant. It is clear that the prosecution did not succeed in proving ownership since the skin or hide recovered from the butcher was not proved to belong to the complainant's stolen sheep. The evidence that this is the skin is hardly sufficient to prove that the skin identified belonged to the complainant.

10. The Appellant was convicted of handling the complainant stolen sheep on the basis of identification of a piece of sheep skin or hide. The conviction was unsafe and cannot be allowed to stand.

11. The Appellants appeal is allowed, conviction quashed and sentence set aside. The Appellant should be set free unless he is otherwise lawfully held.

**DATED SIGNED AND DELIVERED THIS 29<sup>TH</sup> DAY OF MAY 2014**

**LESIIT J**

**JUDGE**