



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NO. 146 OF 2011

RICHARD GATIMU NJUEAPPELLANT

VERSUS

REPUBLICPROSECUTOR

From original conviction and sentence in Criminal Case No. 557 of 2008 at the Senior Resident Magistrate's Court at Gichugu by Hon. B.J. NDEDA - SRM on 26/5/2008

J U D G M E N T

RICHARD GATIMU NJUE the Appellant was charged with the offence of stealing stock contrary to section 278 of the Penal Code.

The particulars as stated in the charge sheet were as follows;

RICHARD GATIMU NJUE: On the 24th day of May 2008 at Kiamoki village in Kirinyaga District within Central Province stole one cow valued at kshs.15,000/= the property of JOYCE WANJIRU GITHINJI.

ALTERNATIVE COUNT

Handling stolen property contrary to section 322(2) of the Penal Code.

The particulars as stated in the charge sheet were as follows;

RICHARD GATIMU NJUE: On the 25th day of May 2008 at about 6.00am at Mbiri village in Kirinyaga District within Central Province otherwise than in the course of stealing dishonestly retained one cow knowing or having reason to believe it to be stolen property.

The Appellant pleaded guilty and was sentenced to ten (10) years imprisonment. The record shows two procedural errors;

- i. The language used was not indicated. The clerk is shown as Isaac. It is not clear if the Appellant understood the language of the Court or if there was any interpretation. This was a serious offence where the Appellant was sentenced to ten (10) years imprisonment. This Court must be satisfied that the Appellant understood the charge and facts.
- ii. After the facts were read this is what the record reads;

ACCUSED - Facts are correct.

PROSECUTOR - No previous conviction but have been charged

with similar offence.

ACCUSED IN MITIGATION - I am married with two children. My

wife is sick. I am a farmer. I am

22 years old.

SENTENCE - Accused is sentenced to serve ten (10) years

Custodial sentence.

From this narrative it is clear that the Court did not enter any Plea of Guilty against the Appellant. He did not also convict the Appellant. What then was the basis of the sentence? Can a Court sentence without a conviction? My answer is **NO**.

Finally the Appellant was said to have stolen a cow valued at kshs.15,000/= which was recovered and given back to the complainant. My finding is that a sentence of ten (10) years imprisonment was too harsh in the circumstances. And for the above reasons I do find that the appeal is merited and is allowed.

The conviction is quashed and the sentence set aside. Appellant to be released forthwith unless otherwise held under a separate warrant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 17th DAY OF OCTOBER 2013.

H.I. ONG'UDI

J U D G E

In the presence of;

M/s Ing'ahizu for State

Appellant

Mutero/Kirong – C/c