

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 261 OF 2010

(Appeal arising from the judgment of (G. O. OYUGI, RM) in the Senior Resident Magistrate's Court at Mumias in Criminal Case No. 761 of 2010)

ISMAEL MANYA OKUMU APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was charged and convicted of the offence of stealing stock contrary to **section 278** of the **Penal Code**. The particulars of the offence were that the appellant *on the 25.7.2010 at about 12.30 a.m. at Matungu village, Matungu location in Matungu district within Western Province, stole one cow valued at KShs.25,000/= the property of SHABAN NAMISI RAMADHAN. The appellant also faced an alternative charge of handling the stolen cow contrary to section 322(2) of the Penal Code.*

The grounds of appeal are that the sentence is harsh, he is remorseful and seeks for forgiveness, he is a first offender and his family of 7 is suffering. During the hearing of the appeal the appellant asked the court for leniency. Mr. Oroni, Learned State Counsel, opposed the appeal and submitted that PW2 and PW3 saw the accused at the scene and he was arrested. He positively identified.

Three witnesses testified for the prosecution. **PW1 PC PAUL BONGEI** was the investigating officer who was based at Mumias police station. On the 26.7.2010 the appellant was taken to the police station by AP officers from Mayoni AP camp at about 10.40 a.m. He recorded statements from the witnesses and charged the appellant with the offence. **PW2, SHABAN NAMISIRAMADHAN** testified that on the 25.7.2010 at about 12.30 a.m. he was at his place of work. He had tethered a brown cow in the kitchen. He heard the door being broken and went to the kitchen armed with a torch. He saw somebody holding the rope that had been used to tether the cow and the person started running away. PW2 screamed and the person slipped down. PW2 held the thief and kept on screaming. He recognized him and neighbours came to assist him. They took the accused to Mumias police station. PW3 **MOSES CHENGURA CHECHE** is a neighbor to PW2. He heard PW2 screaming and he went to his house where he found him struggling with the appellant on the ground. Other neighbours responded and they arrested the appellant who lives about a kilometer away. The appellant was taken to Matungu AP post. The brown cow was recovered.

The appellant was put on his defence and gave sworn testimony. His evidence was that on the 26.7.2010 at between 7 and 8 p.m. he was going home and met people on the road. These included PW2 and PW3 who fought him. He had sold land to PW2 and PW3 was his witness. PW2 wanted more land but the appellant was refusing. He was taken to Matungu AP post and the APs took him to hospital. He was later on taken to Mumias police station and charged with the offence.

The appellant's grounds of appeal mainly deal with the issue of sentence being harsh and the appellant's family suffering. The prosecution evidence does prove that the appellant was arrested at the scene trying to steal the cow. PW2 and PW3 knew the appellant who is a neighbor. The appellant was taken to the police station and charged with the offence. The defence evidence did not raise any doubt on the prosecution evidence and the conviction was proper.

The appellant is serving 7 years' imprisonment. The maximum sentence for theft of stock is 14 years

imprisonment. The cow was indeed not stolen as the appellant was arrested before he stole the cow. I do find that three years imprisonment is commensurate to the offence taking into consideration the fact that nothing was lost. The 7 year sentence is hereby set aside and replaced with three years' imprisonment from the date of conviction. The appeal lacks merit and is hereby dismissed. The sentence is reviewed to 3 years' imprisonment from the date of conviction.

Delivered, dated and signed at Kakamega this 14th day of November 2013

SAID J. CHITEMBWE

J U D G E