



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 258 OF 2011

JULIUS MAINA..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From Original Conviction and Sentence in Criminal case No. 361 of 2011 in the Senior Resident Magistrate's Court at Mariakani – Hon. Wewa - SRM)

JUDGMENT

The appellant was Convicted and Sentenced to seven years imprisonment for the offence of stealing stock contrary to section 278 of the Penal Code.

The particulars are that at Maili Kubwa area in Taru Location Kwale County, he stole one goat of the value of Ksh. 3,000/= the property of **ANNA MUMBUA**.

I have made an attempt of perusing the record of proceedings and the facts do not appear clear.

In his grounds of appeal and submissions what comes out clearly is that the Propellant is a cattle dealer and also operates a butchery. He had bought the goat in question in the course of his trade without the knowledge that it was stolen. It is the 1st Accused who had sold the goat to him. The two were arrested after they were found with the slaughtered goat and before weighing could be done.

Miss Ogweno for the state concedes to this appeal on the grounds that the facts do not disclose the offence of stealing. I do concur with Counsel. The facts are sketchy and muddled up and they do not disclose the offence of stock theft.

I do find that the Conviction was not safe. It is quashed and the Sentence set aside. The Appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this **17th** day of **December, 2013**.

.....

M. MUYA

JUDGE

17TH DECEMBER, 2013.

In the presence of:-

Learned State Counsel Miss Ogweno

The Appellant present

Court clerk Chepkwony