



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**CRIMINAL APPEAL NO. 45 OF 2011**

**PAUL OWINO.....**  
**APPELLANT**

**VERSUS**

**REPUBLIC.....**  
**PROSECUTOR**

**J U D G M E N T**

The appellant was on 24-9-2010 convicted and sentenced to 10 years imprisonment. The offence stealing stock contrary to section 278 of the penal code.

The particulars of the charge are that on 18-9-2010 at Kathieno 'C' sub location, North East Ugenya location in Ugenya district within Nyanza province stole one brown bull valued at Kshs. 9000/= the property of **Peter Opondo Otieno**.

When the matter came up for plea the appellant pleaded guilty. He has now filed this appeal citing two grounds namely:-

- 1.That I am aged 52 years and remorseful for the offence I committed.**
- 2.That the imposed sentence is harsh considering my age.**

When the appellant appeared in court he stuck to the above grounds save to add that he is actually 62 years old. He appeared obviously old and frail.

The state opposed the appeal citing section 348 of the Criminal Procedure Code chapter 75 Laws of Kenya. The learned state counsel conceded though that the issue of sentencing is discretionary and left it to the court.

I have evaluated the evidence on record and seen the appellant's demeanor in court. I agree that he is old and generally frail. Consequently, and prior to arriving at the necessary conclusion it is imperative to receive a report from the probation office located within the appellant's area.

**Dated, signed and delivered at Kisumu this 30<sup>th</sup> day of January, 2012.**

**H.K. CHEMITEI**  
**JUDGE**

HCK/va