



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL APPEAL NO. 527 OF 2009**

**SIMON MWAURA CHEGE.....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No. 535 of 2008 of the Principal Magistrate's Court at Limuru by A.O. Aminga – Resident Magistrate)*

**JUDGMENT**

**SIMON MWAURA CHEGE**, the appellant herein was convicted on 4 counts of Stock Theft **contrary to section 278 of the Penal Code**. The convictions were founded upon the appellant's own plea of guilty.

The facts which gave rise to the charges were that between 8<sup>th</sup> and 14<sup>th</sup> of April 2008, the appellant stole one Friesian Calf and 3 donkeys belonging to 4 different persons. All the 4 persons were residents of Kirenga Location. And each of them woke up to find his or her animal missing.

On 17<sup>th</sup> April 2008 the appellant was seen at the market, with one of the stolen donkeys. He was arrested by members of the public.

The appellant led the members of the public to the place where the other 3 animals were recovered. He was then escorted to Lari Police Station where he was re-arrested and charged.

After the appellant admitted the facts, he was convicted. He was then sentenced to 2 years imprisonment on each count, and the sentences were ordered to run consecutively.

In his appeal to this court, the appellant is only pleading for leniency. He says that he was very remorseful for all that had transpired.

The appellant also says that he is a diabetic patient, who was getting sick regularly as there is lack of proper diet and medication in prison

He feels that he had already suffered sufficiently whilst in prison.

He asked this court to order that the sentences should run concurrently, instead of consecutively.

Having given due consideration to the appellant's submissions, I note that he did own up to his crooked ways immediately after being charged.

However, I do not share his view that just because he pleaded guilty to the charges, he should be deemed an honest person. Honest persons do not go to other people's homes and stealthily walk away with their animals.

In this instance, the appellant did not only steal from one home; he stole animals from 4 different homes.

The stealing spree was between 8<sup>th</sup> and 14<sup>th</sup> of April 2008. As the learned trial magistrate observed;

***“The chronology of theft is rather daring on the part of the accused.”***

Under **Section 278 of the Penal Code**, the theft of stock, namely a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig or the young thereof, attracts imprisonment for a period not exceeding 14 years.

Therefore, when the appellant was sentenced to 2 years on each of the 4 counts, the said sentences cannot ever be described as harsh or excessive. If anything, each of the said sentences was at the lower end of the sentencing scale for the offence in question.

Secondly, even when the 4 sentences do run consecutively the appellant would only be in prison for a total of 8 years. In effect, the sentences for the 4 offences is just over one-half of the maximum sentence for one offence. Therefore, the totality of the said sentences cannot be considered harsh or excessive. I therefore find no reason in law, or in fact to interfere with the sentences in any way.

The appeal is dismissed. I uphold both conviction and sentences.

**Dated, Signed and Delivered at Nairobi this 1st day of February, 2012.**

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**FRED A. OCHIENG**

**JUDGE**