



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 465 OF 2010**

***(From Original Conviction and Sentence in Criminal Case No. 629 of 2010 of the Principal Magistrate's Court at Voi: Nyakundi L.M. – R.M.)***

**KASSIM ABDI .....**  
**.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The Appellant **KASSIM ABDI** has filed this appeal challenging his conviction and sentence on a charge of **STOCK THEFT CONTRARY TO SECTION 278 PENAL CODE**. The particulars of the charge were:

***“On the 17<sup>th</sup> day of August 2010 at Buguta area in Voi district within Coast Province jointly stole a cow valued at***

***Kshs.20,000/- the property of PAUL KOMEKA”***

The appellant entered a plea of **‘guilty’** to the charge whilst his co-accused one ‘Abdullahi Galgalo’ pleaded **‘not guilty’**.

In his written submissions the Appellant argues that he was wrongly convicted as his plea was not unequivocal. I have carefully perused the proceedings from the lower court. The charge was read out to the accused in Kiswahili a language which he understood well. The facts were not read out until 30<sup>th</sup> august 2010 two days after the initial plea was taken allowing the Appellant ample time to reflect and change his plea if he so wished. Upon the facts being read out the Appellant responded by saying:

***“The facts are true”***

Nothing could be clearer than that. The trial magistrate then proceeded to convict the Appellant based on his own plea of guilty. I am satisfied that the rules laid down in the case of **ADAN –VS- REPUBLIC 1973 E.A.** regarding proper plea taking were properly followed. The plea of guilty was unequivocal. The Appellant was properly convicted and I do confirm that conviction.

The Appellant was sentenced to serve seven (7) years imprisonment. The trial magistrate did allow him

an opportunity to mitigate. The sentence in my view was excessive. The Appellant was a first offender and the stolen cow was recovered and returned to the owner. I hereby set aside the 7 year term and substitute instead a term of three (3) years imprisonment to run from the date of conviction in the lower court.

It is so ordered.

**Dated and Delivered in Mombasa this 23<sup>rd</sup> day of April 2012.**

**M. ODERO**

**JUDGE**

In the presence of:

Appellant in person

Mr. Tanui for State