

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 644 of 2010

PETER MWEMA MUNYAO APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The appellant was charged with two counts of stealing stock contrary to Section 278 of the Penal Code. The record shows that he pleaded guilty to both counts and thereafter the facts were stated by the prosecution. He admitted the facts as correct upon which he was convicted on his own plea of guilty. He had one previous conviction of malicious damage to property in which he was fined Kshs. 50, 000/= in default to serve 6 months imprisonment. He confirmed the said previous conviction.

In mitigation he said he got drunk and sold the cows and therefore pleaded for leniency. The previous conviction is not relevant to the two counts upon which the appellant was convicted. That notwithstanding, the appellant stole a substantial number of cows the value of which was quite high. In count 1 he stole 24 heads of cattle valued at Kshs. 500,000/=. While in count II he stole 26 heads of cattle valued at Kshs. 480,000/=. Only 20 of the total number of cattle stolen were recovered.

The penalty provided for this offence is imprisonment not exceeding 14 years. The appellant was sentenced 5 years imprisonment on each count which were ordered to run consecutively.

The offences were committed on the same day and the practice is that under such circumstances, the jail terms should be ordered to run concurrently. Accordingly, I allow the appeal by maintaining the sentence of 5 years imprisonment for each count, but ordering that the sentences should run concurrently and not consecutively.

Orders accordingly.

Dated and delivered at Nairobi this 27th day of November, 2012.

**A. MBOGHOLI MSAGHA
JUDGE**