



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL APPEAL CASE NO. 44 OF 2010**

**WASUKA RAUTON LOKININGO.....APPELLANT**  
**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Appeal from the original conviction and sentence by H. N. Ndungu, Senior Principal Magistrate, in the Senior Principal Magistrate's Criminal Case No.311 of 2010 delivered on 15<sup>th</sup> February 2010 at Nanyuki)*

**JUDGMENT**

**Wasuka Rauton Lokiningo**, the appellant herein, was with three others arraigned before the Nanyuki Senior Principal Magistrate's Court to face a charge of stealing stock contrary to *Section 278* of the Penal Code. The quartet also faced an alternative charge of handling stolen stock contrary to *Section 322(2)* of the Penal Code. The Appellant was convicted on his own plea of guilty to the main charge of stealing stock while his accomplices pleaded not guilty. The Appellant was sentenced to serve five (5) years imprisonment. Being aggrieved, the Appellant preferred this appeal.

On appeal, the Appellant put forward the following grounds in his petition:

- (1) *That the learned trial magistrate erred in law and fact in conducting proceedings in a language which the appellant did not understand.***
- (2) *That the entire proceedings are a nullity.***
- (3) *That the learned trial magistrate erred in law and fact in convicting the appellant while the plea of guilt was not unequivocal.***
- (4) *That the learned trial magistrate's sentence is excessive and harsh.***

Basically, the Appellant is of the view that the plea was equivocal in that he did not understand the language of the Court. Secondly, it is argued that the sentence meted out was harsh and excessive. The appellant prayed for a retrial. Mr. Makura, learned Senior State Counsel, opposed the appeal on the ground that the plea was unequivocal. Mr. Makura pointed out that the language used was indicated to be Kiswahili which the Appellant understood. It is the learned Senior State Counsel's view that the sentence was not harsh nor excessive.

I have reconsidered the case that was before the trial court plus the rival submissions of learned counsels. The main ground argued on appeal is whether or not the plea was equivocal. The Appellant has alleged that he did not understand the language of the court. I have examined the record of appeal and it is apparent that the languages used before the trial court were English and Kiswahili languages. The record

shows that the Appellant and his co-accused understood Kiswahili language. It is clearly indicated that the charge was read and explained to the accused persons who in turn responded in Kiswahili language. The facts were read and explained to the appellant who confirmed the facts to be correct in Kiswahili language. Having carefully examined the record, I am convinced that the Appellant understood and spoke Kiswahili language which was used during his trial before the trial court. There is no evidence that he complained of not understanding that language. He did not make a request to be given a translator in the language he understood. I find this ground unmeritorious. It is rejected. The second ground is to look at whether or not the sentence meted out was harsh and excessive. The Appellant was sentenced to serve five (5) years in prison. The maximum sentence for the offence of stock theft is 14 years. The Appellant in mitigation told the trial magistrate that he was sick and that he had two children in school. The trial magistrate considered those mitigating factors and the fact that the Appellant was a first offender. The trial magistrate also noted that the offence was prevalent in the area hence there was need of a deterrent sentence. I have come to the conclusion that the sentence meted out is not harsh nor excessive. I am also satisfied that the learned Senior Principal Magistrate considered all the relevant factors before pronouncing the sentence.

In the end I see no merit in the appeal. The same is dismissed in its entirety.

*Dated and delivered at Nyeri this 11<sup>th</sup> day of March 2011.*

**J. K. SERGON**  
**JUDGE**