



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HCCRA NO. 4 OF 2009**

*(From: Original Criminal Case No. 162 of 2008 Moyale; Charles Obulutsa SRM)*

**LESIT J.**

**GUTU ABDI GUNICHA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

The appellant was charged with one count of Stock Theft contrary to section 278 of the Penal Code. The appellant faced an alternative count of Handling Stolen Goods contrary to section 322(1) of the Penal Code. The appellant pleaded guilty to the main count, was convicted and sentenced to 7 years imprisonment. The appellant challenges only the sentence in his appeal.

I have perused the record of the proceedings. The particulars of the main count were as follows:

**On the 3<sup>rd</sup> day of May 2008 at Gayo Location in Daari District within Ethiopia Area, stole six herds of cattle valued at 80,000/- the property of Kotobo Afatu Dida.**

After the charge and its particulars were read to the appellant, the prosecution gave the following facts:

**“FACTS: On 3<sup>rd</sup> May 2008 at Gayo, the accused person being in Kenya without the knowledge of his employer Kotobo Afata stole six cows worth 80,000/- the cows were trucked up to Somare Location in Moyale where the accused was found with them after 10 days. The complainant in the**

**company of police officers identified the cows and was arrested and charged. The cows are at the police station and with also photographed whose prints are in court”.**

I find it necessary to look into the merit of the entire case for obvious reasons. The appellant was charged with stealing six heads of cattle at Gayo Location, in Daari District within Ethiopia area. The offence was obviously outside Kenya.

S.5 of the Penal Code provides as follows regarding jurisdiction of local courts:

**“5. The jurisdiction of the courts of Kenya for the purposes of this Code extends to every place within Kenya, including territorial waters”.**

The particulars of the main count facing the appellant and for which he was convicted, clearly show that the offence is alleged to have taken place in Gayo Location of Daari District, within Ethiopia Area. Clearly the offence took place outside the jurisdiction of Kenyan courts. The learned trial magistrate had no jurisdiction to entertain it.

Before I conclude the appeal I must mention one more issue that is quite disturbing. The facts led by the prosecution in support of count 1 of the charge stated as follows:

**FACTS: On 3<sup>rd</sup> May 2008 at Gayo, the accused person being in Kenya without the knowledge of his employer Kotobo Afata stole six cows worth 80,000/- the cows were trucked up to Somare Location in Moyale where the accused was found with them after 10 days. The complainant in the company of police officers identified the cows and was arrested and charged. The cows are at the police station and with also photographed whose prints are in court”.**

The facts of the case contradicted the particulars of the charge in all material particulars. The actual location where the appellant was when he committed the offence is not mentioned. What is disclosed is the place he was arrested. The facts are not supported by the particulars of the charge. Most important the facts do not disclose that it was the appellant who was arrested and subsequently charged. It is not clear who identified the recovered cows, whether complainant or the police or both. The facts of the case did not therefore support the particulars of the charge. For that reason what the learned trial magistrate ought to have done was to either reject the charge under s.89(5) of the CPC or alternatively he should have entered a plea of not guilty. However considering that the learned trial magistrate did not have jurisdiction to entertain count 1 of the charge, he ought to have declined to entertain the case at all in the first instant.

On account of the court’s lack of jurisdiction to entertain this matter, I quash the conviction and set aside the sentence of 7 years imprisonment. The appellant should be set free forthwith.

Those are my orders.

**Dated, Signed and Delivered at Meru this 26<sup>th</sup> day of May, 2011.**

**LESIIT, J.**

**JUDGE**

