

home with a cow. He tied it at the home of his maternal uncle. PW2 reported to the vigilant group member one Patrick Tongolo that he suspected the cow to be stolen and handed it over to the police. The complainant was informed about the recovery of the cow. He went to Chwele where he identified the cow as his property. Patrick (PW3) took the cow to the police station after he had asked the Appellant to produce proof that he had bought the cow as he alleged. The Appellant failed to prove ownership or explain possession of the cow. He disappeared from home and was arrested two (2) days later by members of public. He was handed over to PW5 APC Dennis Matini Mokaya of Changara AP Camp who later handed him over to Malakisi Police Station.

The submission of the state counsel is based on two issues. Firstly, that Patrick Tongolo was not called to testify which leaves a gap. This argument is not supported by the evidence. Patrick testified as PW3 and explained how he recovered the stolen cow through the help of PW2 a cousin to the Appellant. PW3 sent for the Appellant and demanded to know where he got the cow from. The witness asked the appellant to produce documentary evidence. The Appellant brought a letter without his identity card. He changed the story and said that he had bought the cow for somebody. He brought the identity card of a lady which PW3 did not find acceptable. PW3 escorted the cow to the police station. There is therefore no gap in the prosecution's evidence.

The fact that PW3 did not arrest the Appellant immediately does not affect the credibility of the witness. He partly inquired into the matter to try and establish whether the accused had bought the cow as he alleged. The witness referred the matter to the police for further investigations after the Appellant failed to explain the possession of the animal. There is evidence from PW2 that the Appellant disappeared from home after the incident. This explains why he was not arrested for the first two days. It was three days later that he was arrested by a mob and handed over to the relevant authorities.

The Appellant in his defence did not attempt to explain how he came into possession of the stolen cow. The cow of the complainant was stolen in the night of 5th February 2009. The accused was found in its possession only one day later, on 6/2/2009 at 9.00 p.m. PW2 saw the Appellant tie the cow in the compound of his uncle. The doctrine of recent possession is applicable herein. The trial magistrate in his judgment said he was satisfied that the Appellant was found with the cow only a day after the theft. He found the Appellant guilty of the offence. I find that the Appellant was rightly convicted. In his defence, he gave no evidence of anyone fabricating the case against him.

The maximum sentence under section 278 of the Penal Code is a sentence of imprisonment not exceeding fourteen (14) years. The sentence of five (5) years imposed is not excessive.

I dismiss the appeal and uphold the conviction and sentence.

F. N. MUCHEMI
JUDGE

Judgment delivered and dated 26th day of July, 2011 in the presence of the Appellant and the state counsel Mr. Ogoti.

F. N. MUCHEMI
JUDGE