



cow tied near the river. The accused then left PW3's home. PW3 sought the advice of the village elder on the matter. He was advised to report to the police because the cow might be a stolen one. PW3 reported the matter to Administration Police Camp at Misemwa who took the cow in their custody. The Appellant was arrested later and locked in the cells. PW3 learnt later that the cow had been stolen at Naitiri area from PW1 who identified it as his property.

PW4 is a community policing member who arrested the Appellant. He testified that when the Appellant saw him near Kamukuywa school, he entered a vehicle in order to escape. PW4 had to shout that the Appellant was a thief to get assistance in arresting him. PW4 handed the Appellant over to Administration Police at Misemwa Camp.

PW5 is the police officer who received the report of the theft from PW1 at Webuye Police Station. He visited the place near PW3's home where the cow was found tied. He recorded statements from witnesses and charged the Appellant with the offence.

The defence of the Appellant said he was summoned to Kamukuywa Administration Police Camp where he found the stolen cow. He was beaten up and locked in the cells. He said he was a businessman at Kamukuywa.

The trial magistrate believed the evidence of the prosecution. He said about PW3:

***"I find the testimony of PW3 solid. He took a patriotic role in reporting the accused to the village elder....."***

The magistrate analysed the evidence and the circumstances surrounding this case. He then made a finding that the accused was guilty of stealing PW1's cow. The reasons for the state counsel's conceding to the appeal were not carefully thought considering the evidence. He said that the only key witness was PW3 who was brought the cow by the Appellant. Further that there was no eyewitness. With due respect to the learned state counsel, I beg to differ with this kind of reasoning. There must not always be an eye witness for one to be found guilty of an offence. PW3 gave very credible evidence. He saw the accused with the cow in the morning at 5.00 a.m. PW1 said the cow had been stolen that night after he went to sleep. The Appellant was found with the cow may be only a few hours after the theft. PW3 said that the accused told him that he was driving the cow to PW3's compound but he retreated due to the fierce barking of the dogs. He then went to tie the cow near the river not far from the house of PW3. PW3 went there, saw the cow and suspected it was stolen. At that time the Appellant had left to go and look for a buyer. The matter was reported to police and PW4 was assigned the job to arrest the Appellant which he did. He found him at Kamukuywa market possibly still looking for a buyer. PW3 was promised a commission of Ksh.2000/= if he agreed to take care of the cow pending the sale. I agree with the trial magistrate that PW3 is a patriotic Kenyan who sacrificed himself to prevent crime. He said the Appellant was his cousin and this did not affect his admirable courage to ensure justice was done to the victim of the theft. During cross-examination, the Appellant did not say or suggest that there was any grudge between him and PW3.

In his defence the Appellant said that he took himself to the Administration Police Misemwa Camp. This was not true because PW4 is the one who had arrested the Appellant and taken him to the camp. The Appellant's defence was a mere denial and did not shake the evidence of PW3.

There was recent recovery of the cow from the Appellant only a few hours after the theft. PW1 and her son PW2 identified the cow as their property at Misemwa Camp. The Appellant was found in possession of the cow by PW3. He confessed that he is the one who tied it near the river next to the home of PW3. In his defence, the Appellant failed to explain how he came into possession of the stolen property. The Appellant did not lay any claim on the cow.

It was within the law and in accordance with police practice to photograph the cow and release it to the owner. The photographs were produced and the cow brought to court by PW1 during hearing. I come

to a conclusion that the trial court correctly convicted the appellant. All the ingredients of the offence were proved. The Appellant intended to permanently deprive PW1 of her cow.

I find no merit in this appeal. I uphold the conviction and the sentence. The appeal is accordingly dismissed.

**F. N. MUCHEMI**  
**JUDGE**

Judgment dated and delivered this 18<sup>th</sup> day of July, 2011 in the presence of the Appellant and Mr. Ogoti the state counsel.

**F. N. MUCHEMI**  
**JUDGE**