



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CRIMINAL APPEAL NO. 8 OF 2008**

M'NCHEBERE M'LURUTI .....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From the original conviction and sentence in criminal case No.126 of 2006 of G. Oyugi, Senior Resident Magistrate's court at Tigania)*

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

The Appellant M'Nchebere M'Luruti was convicted for the offence of stealing stock contrary to Section 218 of the Penal code. The Appellant was sentenced to 2years imprisonment.

The particulars of the charge were that on the 18<sup>th</sup> day of January, 2006 at Buuri location in Meru North District within Eastern Province, jointly stole two bulls valued at Kshs.32,900 the property of Kingori Thiringi.

The evidence adduced was that the complainant left his two cows and two bulls with the Appellant for grazing purposes. That on 18<sup>th</sup> January, 2006 the complainant went for his livestock but was informed by the Appellant that the two bulls were missing. That search for the bulls ensued. That one bull was recovered from home of 2<sup>nd</sup> accused at Muthara. The Appellant and 2<sup>nd</sup> and 3<sup>rd</sup> accused were arrested and charged with the offence of stealing stock.

The Appellant filed this appeal through his advocate Mrs. M. G. Kaume Advocate setting out eight grounds of appeal.

When the appeal came up for hearing, the learned State Counsel Mr. Musau informed the court that he was conceding the appeal. The Counsel for the appellant indicated that she had no objection to learned State Counsel conceding the appeal.

The reason for conceding the appeal was that the complainant placed his two bulls in custody of the Appellant for safe keeping and for release on request. That when the complaint went for the bulls the following day he found them missing. That the Appellant explained they got lost and was not aware who had taken them. That search was mounted and one bull was recovered from home of Appellants co-accused at the trial court; who happened to be Appellants son. The learned Counsel submitted that there was no evidence of common intention and none can be found from the lower court proceedings.

He submitted that the conviction is not safe and there was no sufficient evidence to convict Appellant's sons who were found with the animals but not the Appellant.

PW1 testified that he had taken four cattle to the Appellant for herding and on the next day he found two bulls missing and the appellant told him that he could not tell how the bulls got lost. The 2<sup>nd</sup> accused person told us that 3<sup>rd</sup> and 4<sup>th</sup> accused persons had the two bulls.

PW2 testified that he saw 3<sup>rd</sup> and 4<sup>th</sup> accused persons with two bulls, who wanted to have them slaughtered at the slaughterhouse but the 2<sup>nd</sup> accused person refused.

PW3 in cross-examination said I cannot tell who took the bulls from 1<sup>st</sup> accused person's home.

I have re-evaluated and analyzed the prosecution evidence at the trial court, and I find that the learned State Counsel was right to concede the appeal.

Accordingly, the appeal is allowed, the conviction quashed and sentence set aside. The Appellant shall be set at liberty forthwith unless he is otherwise lawfully withheld.

DATED, SIGNED AND DELIVERED AT MERU THIS 7<sup>TH</sup> DAY OF DECEMBER, 2011.

**J. A. MAKAU**

**JUDGE**

**Delivered In Open Court in Presence Of:**

1. Mr. Musau for State
2. Mrs. Kaume for the appellant

**J. A. MAKAU**

**JUDGE**