



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Criminal Appeal 100 of 2009

BETWEEN

PAUL KIPROP KORIR APPELLANT

VERSUS

REPUBLIC RESPONDENT

**(Being an appeal from original conviction and sentence of the SRM's court at Kilgoris in
criminal case No. 871 of 2006 - W.N. Kaberia, RM)**

JUDGMENT

The appellant was charged with stealing stock contrary to **section 278** of the **Penal Code**. The particulars of the offence were that on the night of 21st and 22nd October 2006 at Mophir village in Transmara District of the Rift Valley Province jointly with another stole 10 heads of cattle valued at KShs. 60,000/= the property of **Daniel Ole Kiramba**.

The appellant was tried, convicted and sentenced to five years' imprisonment.

Being aggrieved by the said conviction and sentence, the appellant preferred an appeal to this court. He stated that there was insufficient evidence to warrant a conviction.

The prosecution evidence briefly stated was as hereunder:

Daniel Ole Kiramba, PW2, testified that when he woke up on the morning of 22nd October 2006, he realized that his ten cows had been stolen. Together with another people they followed the foot prints up to a place known as Kapalecho. They did not find the animals and returned back home. On the following day they continued with the search. They went to Itembe market in Bomet District where they found the animals with the appellant and one other person known as **Wesley Kiplangat Cheruiyot** who was the appellant's co-accused before the trial court. PW2 was with **Bernard Kiplangat Arap Koech, PW3** who is an Assistant Chief and **Inspector Alexander Njagi, PW4**.

The evidence of PW2 was well corroborated by that of PW3 and PW4.

In his statement of defence, the appellant testified that on 23rd October 2006 he went to sell his father's cattle at Chepuony market. After he sold the cattle he boarded a vehicle to go back home. On the way the vehicle broke down and so he decided to alight and walk home.

At around 9.00 p.m. on his way home he was stopped by three people who assaulted him. He lost consciousness and when he regained it three days later, he found himself at a police cell in Bomet. He denied having committed the offence.

Photographs of the recovered animals were produced before the trial court by **Police Constable Charles Rotich, PW1**. The evidence of PW2, PW3 and PW4 was clear and consistent that the stolen animals were recovered from the appellant and his accomplice. They did not give any satisfactory explanation as to how they came to be in possession of the stolen animals.

In the circumstances, I am satisfied that the appellant's conviction was warranted. The sentence that was handed down is not harsh, considering the number of animals that had been stolen. This appeal lacks merit and it is dismissed in its entirety.

DATED, SIGNED AND DELIVERED AT KISII THIS 22ND DAY OF MARCH, 2010.

**D. MUSINGA
JUDGE.**

22/3/2010

Before D. Musinga, J.

Mobisa - cc

Mr. Mutai for the Respondent

Appellant present

Court: Judgment delivered in open court on 22nd March, 2010.

**D. MUSINGA
JUDGE.**