



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Criminal Appeal 49 of 2009**

*(From the Original Conviction and Sentence in Chief Magistrate's Court Criminal Case No.90 of 2009 by the Resident Magistrate A.B.MONG'ARE)*

**ALLAN SAKWA:.....APPELLANT**

**VERSUS**

**REPUBLIC:.....RESPONDENT**

**JUDGMENT**

**ALLAN SAKWA** was convicted of the offence of stealing stock contrary to section 278 of the Penal Code. The particulars were that on 23/12/2008 he stole three cows valued at Kshs.100, 000/= the property of Rose Moshe. He was sentenced to serve imprisonment for five (5) years. He now appeals against sentence and prays that the sentence be reduced.

The Appellant explained the circumstances that led to the commission of the offence as differences between himself and his aunt who he alleged had harvested his crops and sold them and so he wanted to force her to pay him by taking away the cows. He is a first offender and a student who wishes to finalise his education. He said he was very remorseful and has learned his lesson. He has served imprisonment for almost a year now having been imprisoned on 13/03/2009.

It is evident that the trial magistrate was not moved by the Appellant's mitigation and gave a fairly long term of imprisonment yet the stolen cows were recovered. The Appellant is a young student who says that he wishes to pursue his education. The state does not oppose the appeal on sentence. On my part I think that the Appellant should be given another chance. In the premises therefore I set aside the sentence and substitute the same with the term of imprisonment already served from 18/03/2009 to the date of this judgment. I order therefore that the Appellant be set at liberty forthwith unless otherwise legally held.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 4<sup>TH</sup> DAY OF MARCH 2010.**

**P.M.MWILU  
JUDGE  
IN THE PRESENCE OF**

Paul Ekitela - Court Clerk  
Present - Appellant  
Mr. Kabaka - Counsel for the state.