



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CRIMINAL APPEAL 295 OF 2008**  
**DANSON NJERU MKIREMA ..... APPELLANT**  
**VERSUS**  
**REPUBLIC ..... RESPONDENT**  
**JUDGEMENT**

The Appellant herein **DANSON NJERU MKIREMA**, has filed this appeal against his conviction and sentence before the Resident Magistrate’s Court at Wundanyi. The Appellant had been charged with the offence of **STEALING STOCK CONTRARY TO SECTION 278 OF THE PENAL CODE**. In addition he faced an alternative charge of **HANDLING STOLEN PROPERTY CONTRARY TO SECTION 322(2) OF THE PENAL CODE**.

On 25<sup>th</sup> March 2008 the Appellant was arraigned before the learned Resident Magistrate and the charges were read out to him in Kiswahili. The Appellant responded by saying

***“Ni kweli”***

i.e. That is true

Thereafter the prosecutor read out the facts to him to which the Appellant responded

***“The facts are correct”***

thereby maintaining his plea of guilty. The trial magistrate proceeded to convict the Appellant on his own plea of guilty in accordance with the provisions of S. 207(2) of the Criminal Procedure Code. After listening to his mitigation the court sentenced the Appellant to serve seven (7) years imprisonment.

I have perused the written submissions filed by the Appellant and I note that he does not raise issue with his conviction. The Appellant is basically offering mitigation and appeals against his sentence which he terms harsh and excessive. As I have already stated earlier I am satisfied that the plea was properly taken and

that the proceedings were conducted in a language which the Appellant understood well. S. 278 of the Penal Code provides for a maximum sentence of fourteen (14) years imprisonment for theft of livestock. In this case a single cow was stolen, the same was recovered and was exhibited in court. The Appellant pleaded guilty thereby saving the court's time and doing away with an unnecessary trial. The Appellant was a first offender. In view of all the above factors I do agree with the Appellant that a seven (7) year sentence though lawful was harsh in the circumstances. The trial court ought to have considered an alternative like a fine or probation etc. The appeal against sentence succeeds. I hereby set aside the seven (7) year sentence imposed upon the Appellant. I substitute a fine of Kshs.8,000/- in default he will serve two (2) years in prison. Sentence to run from the date of his conviction by the lower court.

**Dated and Delivered in Mombasa this 12<sup>th</sup> day of July 2010.**

**M. ODERO**

**JUDGE**

Read in open court in the presence of:-

M. Ondari for State

Appellant in person

**M. ODERO**

**JUDGE**

**12/07/2010**