



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 245 OF 2010

(From Original Conviction and Sentence in Criminal Case No. 508 of 2010 of the Principal Magistrate's Court at Kwale: D.O. Ogembo – P.M.)

HASSAN KWAKA CHINDORO APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant **HASSAN KWAKA CHINDORO** has filed this appeal challenging his conviction and sentence on a charge of **STOCK THEFT CONTRARY TO SECTION 278 OF THE PENAL CODE**. The Appellant entered a plea of guilty to the charge on 25th March 2010 before **HON. D.O. OGEMBO**, the learned Principal Magistrate sitting at Kwale Law Courts. The facts were then read out to him by the prosecutor **INSPECTOR GITONGA**. The Appellant maintained his plea of guilty saying

“The facts are correct.”

The learned trial magistrate did then in compliance with S. 207(2) of the Criminal Procedure Code convict the Appellant on his own plea of guilty. I have carefully perused the record from the lower court. The proceedings were interpreted into Kiswahili a language which the Appellant fully understood. He cannot claim not to have comprehended the proceedings. When called upon to mitigate the Appellant reiterated his plea of guilty by saying

“I ask for leniency. I am a first offender. I shall not repeat.”

The undertaking not to repeat the offence carried the implied admission of having committed the offence he was charged with. In my view this plea was unequivocal. The trial magistrate did render a proper and true conviction. I do confirm the same.

The Appellant was allowed an opportunity to mitigate and thereafter was sentenced to serve five (5) years imprisonment. This sentence was lawful and fell way below the 14 year maximum sentence provided by S. 278. I do uphold the five (5) year sentence. This appeal fails in its entirety.

Dated and Delivered in Mombasa this 14th day of October 2010.

M. ODERO
JUDGE

Read in open court in the presence of:
Appellant in person
Mr. Onserio for State

M. ODERO
JUDGE
14/10/2010