



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL NO. 80 OF 2009
(Appeal from conviction and sentence of the Senior Resident Magistrate’s Court at Butere in Criminal Case No. 215 of 2009 [G. O. OYUGI ESQ., RM])

JAMES CHITERI RAMOYI.....
 **APPELLANT**

VERSUS

REPUBLIC
 **RESPONDENT**

JUDGEMENT

1. **JAMES CHITEYI RAMOYI** was charged with the offence of stealing stock contrary to S.278 of the Penal Code. It was alleged that on 1.3.2009 at Shiraa village in Butere District, he stole a calf valued at Kshs.4,500/=, the property of **John Otunga**. He denied the charge and upon trial was convicted, and sentenced to serve seven (7) years’ imprisonment.

2. His appeal was initially against both conviction and sentence but at the hearing he sought leniency on sentence only.

3. I note from the record that in any event, looking at the evidence of PW1, John Otunga, and PW4, William Odongo, on the night of 2.3.2009, PW1 was woken up by his cattle mooing and sounding disturbed. He went to their shed and with a torch in his hands, he saw someone hiding behind a cow. He sought help and PW2 and others apprehended the appellant and took him to Khwisero Police Post where PW2, PC Leonard Oruko booked the report and investigated the matter before charging him with the offence of stealing stock.

4. The Appellant was arrested at the scene and red-handed. He had no credible answer to the charge because he admitted being at the scene and said that he had been sent to take the cow from PW1. He never said who sent him and why. His conviction was certainly safe and without error.

5. On sentence, this court can only interfere with the same in the following circumstances’ i.e. where-

- i) the trial court has acted on a wrong principle; or
- ii) has overlooked some material factors; or
- iii) that the sentence is manifestly excessive in the circumstances of the case (see **Macharia vs R. 2003 2E.A 559**).

6. The Appellant has failed to demonstrate how any of the above principles would apply to his case and I see no reason to interfere with the discretion conferred upon the trial court by **S.278** of the Penal Code.

7. In the event, the Appeal has no merit and is dismissed.

8. Orders accordingly.

Delivered, dated and signed at Kakamega this 4th day of November, 2010.

ISAAC LENAOLA
J U D G E