



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL APPEAL NO. 208 OF 2009**

*(Appeal from conviction and sentence of the Senior Resident Magistrate's Court at Butere  
in Criminal Case No. 670 of 2009 [G. O. OYUGI ESQ., RM])*

**PAUL AMUYE SAKAYA ..... APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. The Appellant, **PAUL AMUNYE SAKAYA** had been charged with the offence of stealing stock contrary to **Section 278** of the Penal Code. It was alleged that on 1.9.2009, at Enanka village in Shirembe Sub-location, Marama Location, Butere-Mumias District within Western Province jointly with others not before court, he stole two bulls all valued at Kshs.30,000/=, the property of Musa Amanyama Juma. He was found guilty and sentenced to seven (7) years imprisonment. In the alternative it was also alleged that he handled stolen property contrary to S.322 (2) of the Penal Code. He was dissatisfied and filed this Appeal on the following grounds;

i) That he pleaded not guilty to the above charge(s).

ii) That the learned trial magistrate erred in law and fact by failing to appreciate that the [evidence tendered] was discredited, speculative and lacked probative value.

ii) That the learned trial magistrate erred in law and fact by rejecting his alibi defence which sufficiently created a reasonable and considerable doubt as to the strength of the prosecution's case.

2. The evidence tendered before the trial court was straight-forward; That on 1.9.2009, two bulls were stolen from the home of PW1, Musa Amanyama Juma and upon making a report to PW2, Aggrey Maina, Assistant Chief of Shirembe Sub-location, who in turn sought the assistance of PW4, Sgt. Solomon Salu of Butere Police Station, a search was conducted and according to PW4, a suspect (unnamed) was apprehended and beaten by members of the public and that suspect named the Appellant as his confederate. That at 2 p.m. on 2.9.2009, one of the bulls was recovered while wandering near a sugarcane plantation and when a search was conducted in the plantation, a second bull was recovered and the Appellant who was about ten (10) metres away tried to run away but was apprehended. PW1 identified

both bulls as belonging to him and PW3, **P.C. Philip Lomar**, corroborated the evidence of the other witnesses and was the one who arrested the Appellant as he allegedly tried to run away. He was later charged with the offence elsewhere stated above. PW4 added that the sugarcane plantation belonged to one Makokha, and in his defence, the Appellant denied being in the plantation as alleged and instead stated that he was arrested at his home at 3.30 p.m. on an unclear date, assaulted and then led to a police motor-vehicle and shown two bulls which he had no knowledge of.

3. My duty is simple; to re-examine and re-evaluate the above evidence and to find out whether the charge was proved beyond reasonable doubt.

4. Firstly, I have no doubt that the two bulls were stolen from their shed at PW1's home on 1.9.2009. Further, there is no evidence to create any doubt that the bulls did not belong to PW1.

5. Secondly, there is no eye witness to the actual theft and I have no doubt that contrary to his assertion that he was arrested at home, the Appellant was in fact arrested within the sugarcane plantation belonging to one, Makokha, and so his alibi defence could not dislodge the clear, consistent and unchallenged evidence of PW1, PW2, PW3 and PW4 – see also the decision in **Karanja vs. R. [1983] KLR 501** for a discussion on alibi defences generally.

6. Thirdly, and the only issue to give some consideration is whether the presence of the bulls and the Appellant in the sugarcane plantation would lead to an inference that the Appellant was in possession of recently stolen property. Evidence was led, and I believe it, that he was 10 metres away from the stolen stock and his action of running away remained unexplained too. His conduct in being in Makokha's sugarcane plantation and with stolen bulls nearby would lead to only one conclusion; that the Appellant was the thief and the holding of the Court of Appeal in **David Githure Kanyoro & Ano. Vs. R. Cr. Appea No. 265/2005** is pertinent and where it was held as follows;

***“The position in law is that a person found in recent possession of property reported as stolen is presumed to be the thief of it unless he gives a reasonable explanation as to how he came to be in possession thereof. This is a presumption of fact arising under Section 119 of the Evidence Act Cap 80 Laws of Kenya and is rebuttable [see Jethwa v. R. 1969 E.A. 459].”***

7. I wholly agree and the same presumption applies in this case. The Appellant's protestations that the evidence against him was speculative and his defence ignored, cannot be sustained and I see no merit in the Appeal. No complaint has been made regarding the sentence meted out and in any event, it is fair and just in the circumstances of the case. The Appeal is hereby dismissed in its entirety.

8. Orders accordingly.

***Delivered, dated and signed at Kakamega this 4<sup>th</sup> day of November, 2010.***

**ISAAC LENAOLA**

**J U D G E**

