

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Criminal Appeal 210 of 2006

(From original conviction and sentence in the Chief Magistrate's Court

Criminal Case No.2056 of 2005 – E. OLWANDE – RM)

SAMSON OGECHI ONGUTI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

During the hearing of this appeal the Appellant indicated that he was satisfied with the conviction and was now challenging only the sentence. He was sentenced to 7 years imprisonment by the subordinate court for the offence of stock theft contrary to **section 278** of the **Penal code**. The particulars were that on 2nd of September, 2005 at Kisii Township in Central Kisii District of the Nyanza Province he stole one cow valued at Kshs.16000/- the property of **Samson Ondimu Bundi**. He was convicted following trial.

The Appellant sought the reduction of the sentence on the ground that it was too harsh and excessive. During mitigation the Appellant had indicated that he was sickly and had a family with six children in high school all of whom depended on him. He informed court that his wife had ulcers. He sought to be pardoned to be able to care of his family. The court indicated that it had considered his mitigation. It was also clear that the Appellant was a first offender. **Mr. Kemo** for the state has left the court to deal with the issue of sentence.

The maximum penalty for the offence at hand is 14 years imprisonment. It is clear from that punishment that the offence is a serious one. I consider, however, that the Appellant stole only one animal whose value was Kshs.16000/-. He has a large family with children in high school and has a sick wife. Being a first offender, it is clear that the sentence was manifestly excessive in the circumstances of the case. I make an order setting aside the sentence and in its place substituting it with 3 years imprisonment. To that extent, therefore, the appeal is allowed.

DATED at **KISII** this 27th Day of May, 2009

A. O. MUCHELULE

JUDGE

27/5/09

Before A. O. Muchelule J

Mongare cc.

Mr. Kemo for State.

Appellant present.

Court: Judgment in open court.

A. O. MUCHELULE

JUDGE