



**REPUBLIC OF KENYA**

**HIGH COURT AT KISII**

**CRIMINAL APPEAL 214 OF 2008**

**MOSETI MONANGA MOSETI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant was convicted on his own plea of guilty on a charge of stealing stock contrary to **section 278** of the **Penal Code**. The offence was committed on 27<sup>th</sup> July, 2006 at Gwikonge area within Kuria District, Nyanza Province. The appellant stole 5 heads of cattle valued at Kshs. 55,000/= . The stolen animals were recovered. He was sentenced to 7 years' imprisonment. His appeal is no more than further mitigation. He says that he was severely beaten by members of the public and sustained permanent injuries. He pleaded with this court to reduce the sentence.

**Mr. Mutai, Senior State Counsel**, opposed the appeal. He submitted that the sentence handed down by the trial court was neither harsh nor excessive; considering that the maximum sentence for the offence is 14 years' imprisonment.

The appellant has been in jail since 2<sup>nd</sup> October, 2006, almost 3 years. Whereas the learned trial magistrate cannot be faulted for exercise of his discretion in sentencing the appellant, taking into account the congestion in our prisons, the period which the appellant has so far served and his mitigation before the trial court as well as before this court, I am inclined to allow the appeal, which I hereby do. Consequently, the sentence of 7 years' imprisonment is set aside and substituted with a sentence for the period already served. The appellant is set at liberty forthwith unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT KISII THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2009.**

**D. MUSINGA**

**JUDGE.**

**24/9/2009**

Before D. Musinga, J.

Mobisa – cc

Mr. Mutai for the State

N/a for the appellant

Appellant – present

**Court:** Judgment delivered in open court on 24<sup>th</sup> September, 2009.

**D. MUSINGA**

**JUDGE.**