

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appeal 221 of 2007

(From original conviction and sentence in Criminal Case No.1665 of 2005 of the Chief Magistrate's court at Nakuru – TANUI, RM)

ERIC CHEBON NALEKEM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

ERIC CHEBON NALEKEM, the appellant was charged with the offence of stock theft contrary to **Section 278** of the **Penal Code**. He was in the alternative charged with handling stolen goods contrary to **Section 322(2)** of the **Penal Code**. In count two he was charged with forgery contrary to **Section 345** of the **Penal Code** and in count three he was charged with uttering a false document contrary to **Section 353** of the **Penal Code**. He denied all the charges but after trial before the Resident Magistrate at Nakuru he was acquitted of the alternative charge of handling but convicted on count one and sentenced to six years imprisonment. He was also convicted of the offences of forgery and uttering and sentenced to two years imprisonment on each. The sentences were ordered to run concurrently. He has appealed to this court against all those convictions and sentences.

At the hearing of his appeal before me, the appellant abandoned his appeal against conviction and pleaded for the reduction of his sentence claiming that having been incarcerated since 2005 when he was arrested he has suffered and learnt his lesson. He said that upon his conviction his wife ran away and got married to another man leaving their young children with his aged mother. He pleads for leniency. Mr. Gumo for the state left the matter of sentence to me.

I have read the record of appeal in this matter. The appellant was wise to abandon his appeal against conviction. In view of the evidence on record from PW5 who had issued him with a movement permit on 31st May 2005 which he altered to read 8th June 2005 and instead of two cows to read six cows, Robert Thuo, PW3, to whom he sold the five cows and a bull that were stolen from PW1 and that of Joseph Kibet, PW5 the meat inspector Gilgil slaughter house to whom he uttered the forged movement permit he stood no chance whatsoever in succeeding the appeal against conviction.

The record shows that the appellant was charged in count two with forgery contrary to **Section 345** of the **Penal Code**. That section only defines the offence of forgery and does not create an offence. The offence of forgery is provided for in **Section 349** of the **Penal Code**. In the circumstances I find that the appellant's conviction on that count cannot be allowed to stand. I therefore quash the conviction on that count and set aside the sentence thereon.

The appellant's conviction on counts one and three, however, was proper. Although the appellant has since his conviction been deserted by his wife and his young children have been left with his aged mother having carefully read the record I do not think that the appellant deserves much sympathy from this court. This is because he carefully planned the theft of PW1's cows. He had on 31st May 2005 been issued with a movement permit for two cows, he forged it to enable him move the six cows he stole from PW1's home. And although five cows were recovered he had been paid Kshs.34,000/- out of the agreed purchase price of Kshs.79,000/-. Taking all these factors into account the appellant is one of those people who should be kept away from the rest of the society as long as possible. However, given the suffering of his children and the fact that the appellant has owned up and abandoned the appeal against conviction, I reduce the sentence in count one to four years imprisonment but leave the one in count three as it is. Save for this the appellant's appeal is hereby dismissed in its entirety.

DATED and delivered at Nakuru this 25th day of November, 2009.

D. K. MARAGA

JUDGE.