



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Criminal Appeal 226 of 2006**

**KATANA CHARO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**J U D G M E N T**

Katana Charo, the appellant herein and one Kahindi Kenga were tried on a charge of stealing stock contrary to Section 278 of the Penal Code. After undergoing a full trial, they were convicted and each sentenced to serve 4 years imprisonment with hard labour. Being dissatisfied, Katana Charo preferred this appeal. The appellant put forward a total of 4 grounds in his petition. Those grounds when critically considered amount to one ground, that is to say that the prosecution did not prove its case to the standard of beyond reasonable doubt. On his part Mr. Monda, the learned state Counsel urged this court to dismiss the appeal on the ground that the same lacks merit.

The case that was before the trial court was short and straightforward. Karisa Nzomo (P.W.1) the complainant, had left his cows under the care of two young children. When he came back home in the evening he found two calves missing. The two calves were later found tied and left in some bushes in the grazing field. One was a female black calf with a white head and the other was a white grey bullock. They were untied and driven back home. They were later identified and produced in court. Katana Kazungu (P.W.4) a boy child aged 7 years was herding his father's cows with other age mates. At 4.00 p.m. on 10<sup>th</sup> December 2005, he said he saw Kahindi Kenga, the 2<sup>nd</sup> accused trying to drive the cows he was herding to the direction where the two calves were tied in the bushes. P.W.4 said that when the second accused realized he had seen him he took off. P.W.4 drove his cows home and informed his grandfather Harry Menza (P.W. 5) of what he had seen. P.W.5 and other people went to the bushes where they found the cows still tied and lying down. P.W. 5 identified the cows as belonging to P.W.1. The cows were untied and taken to the owner. On the way P.W. 5 and the group driving the animals met the owner (P.W.1). The eye witness was Kabibi Hare Menza (P.W.3). P.W.3 said on that material evening she was coming from the river when she heard cows groaning as though they were being slaughtered. She went to check and was surprised to see Katana Charo (appellant) and Kahindi Kenga tying the animals. She fled as she was frightened and informed her father. She and her father went to the scene where they found other people and the cows. Ngao Karisa (P.W.2) too, heard the cows groaning while he was passing by. He went to check and on the way he met Katana Charo (Appellant) a person he knew very well. They greeted each other as the appellant moved on the opposite direction. P.W.2 found the animals tied by the legs ready for slaughter. P.W.2 went to alert other people amongst them was P.W.1.

When placed on his defence Katana Charo (Appellant), denied committing the offence. He claimed he was arrested for an offence he knew nothing about.

I have reconsidered and re-assessed the evidence tendered before the subordinate court. It has been argued by the appellant that the evidence tendered by the prosecution did not prove the charge against him to standard of beyond reasonable doubt. It is the submission of Mr. Monda, learned State Counsel the appellant was placed at the scene of crime by the evidence of P.W. 2 and P.W.3. After a careful

reconsideration of the evidence, it is clear from the evidence of P.W.3, that the appellant was seen tying the cows in conjunction with his co-accused Kahindi Kenga. The appellant is somebody well known to P.W. 3. P.W.3 was consistent even when under intense cross-examination. P.W.2 met the appellant within the place where the cows were tied. The appellant is somebody well known to P.W. 2. In fact the appellant is an uncle to P.W. 2. He even greeted him. In fact the appellant was found tying the animals with an accomplice. The appellant and his accomplice had a common intention to steal the cows. I am convinced the prosecution's case was proved to the required standard of beyond reasonable doubt. There is no appeal as against the sentence but nevertheless I find the sentence to be lawful. The same is not harsh nor excessive. In the end I dismiss the appeal in its entirety.

Dated and delivered at Mombasa this 27<sup>th</sup> day of June 2008.

**J. K. SERGON**

**J U D G E**

In open court in the presence of Mr. Monda for the state and in the presence of the Appellant.