

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

**NAKURU
Criminal Appeal 42 of 2008**

CHRISTOPHER AKUE EKIRU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

CHRISTOPHER AKUE EKIRU (the Appellant) was with two others charged with two offences. The first one was burglary contrary to Section 304(2) and stealing contrary to Section 279(b) of the Penal code. The second count was of killing an animal intending to steal it contrary to Section 289 of the Penal Code. In the alternative the Appellant was alone charged with handling stolen property contrary to Section 322(2) of the Penal Code. They pleaded not guilty to the charges but after trial before the Senior Resident Magistrate at Nakuru they were all acquitted of count one but they were convicted on count two and sentenced to three years imprisonment. The appellant was also convicted on the alternative charge to count one and also sentenced to three years imprisonment. He has appealed against both the convictions and sentences.

I agree with Mr. Mugambi that there was no conclusive proof that the head and carcass allegedly found with the Appellant was of a sheep that belonged to PW1. PW2 the Livestock Manager of PW1 said that he was able to identify the head of that sheep as belonging to his employer because of a marking on the ear. He did not give details of that marking. He also did not say whether or not the other sheep on PW1's farm had the same marking.

PW3 who also worked on the same farm never made mention of that marking. PW1, the owner of the sheep, never said that his sheep had any particular identifying mark. The cushions allegedly found with the Appellant also did not have identifying mark.

In the circumstances I agree with Mr. Mugambi that the Appellant's conviction is not safe and cannot be sustained. I therefore allow this appeal, quash the conviction and set aside the sentence. The Appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 10th day of July 2008.

D. K. MARAGA

JUDGE