



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

Criminal Appeal 16 of 2007

EVANS LUVUSA MALANDE APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G E M E N T

EVANS LUVUSA MALANDE, the appellant told the court that he needs help of the court. He said that he is an only child and that it was only the court that could help him.

As far as he was concerned, the investigations carried out by the police had favoured only one side. It was his contention that the said investigations were not balanced.

His submission was that the calf which he had taken from the complainant was actually his. His explanation was that the complainant was his neighbour, and that the said complainant had given to him a cow, to look after. The understanding between him and the complainant was that the first two calves of that cow would go to the complainant, whilst the 3rd calf would belong to the appellant.

However, when he took the 3rd calf, he was charged.

It is for that reason that the appellant asked this court to help him.

However, the learned state counsel pointed out that the appellant had been convicted on his own plea of guilty. As the plea was unequivocal, the state submitted that the conviction was proper.

And as regards the sentence, the state submitted that the same was not excessive. Therefore, I was asked to dismiss the appeal.

The charge facing the appellant, before the lower court was for stock theft contrary to *section 278* of the Penal Code.

The facts set out in the charge sheet were that the appellant stole one brown heifer valued at KShs.10,000/= which was the property of Joyce Adisa.

The facts that were read out in court, after the appellant had pleaded guilty, were to the effect that the

appellant had tied her brown heifer in the kitchen within the main house. At 4.00 a.m., the complainant heard her hens making noise and she woke up, only to find that a hole had been dug on the wall, and the heifer stolen.

The appellant and his co-accused led to the person to whom they had sold the heifer, and the heifer was recovered.

When those facts were read out to the appellant, he said;

“The facts are correct.”

It therefore defies all logic for the appellant to now put forward a completely different story before this court. To my mind, the story was simply intended to hoodwink the court into sympathizing with the appellant.

The story cannot be true at all, and the attempt to mislead the court is rejected with the contempt it deserves.

There is no doubt that the appellant’s plea was unequivocal. Therefore, the conviction is sound, in law.

As regards sentence, the maximum penalty prescribed under *section 278* of the Penal Code is 14 years imprisonment.

The appellant was jailed for 4 years. Clearly, that sentence is lawful. It is not excessive even considering that the appellant was a first offender.

In the result, I find no merit in the appeal. It is therefore dismissed. Both the conviction and the sentence are upheld.

Dated, Signed and Delivered at Kakamega, this 1st day of July, 2008

FRED A. OCHIENG

J U D G E