

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 38 of 2007

MEJOOI OLE SHUNKURU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

MEJOOI OLE SHUNKURU, the Appellant herein was upon trial for the offence of stock theft contrary to **Section 298** of the **Penal Code** convicted and sentenced to 7 years imprisonment. He has appealed against both the conviction and sentence.

In his short address during the hearing of the appeal, the Appellant submitted that he never committed the offence with which he was convicted. The donkey he is alleged to have stolen was not found with him but with one Kamau Mbugua who he said had no document to show he is the one who sold it to him. For the state Mr. Njogu argued that the Appellant's conviction was based on overwhelming evidence of PW2 and PW3 and urged me to dismiss this appeal in its entirety.

I have read the lower court record. The prosecution evidence was riddled with several contradictions. While PW3 claimed that he bought the donkey from the Appellant for Kshs.2,800/-, PW4 who was with him said he bought it for Kshs.3,000/-. PW3 also claimed that he recorded the name and ID Card Number of the Appellant in an agreement between them, while PW4 said that the ID Card Number noted in that agreement was that of the Appellant's wife. He said the Appellant had claimed that his ID was held in a hospital as security. That alleged agreement was never produced.

Taking into account these contradictions and the fact that nobody saw the Appellant steal the donkey and having not been found with him, I find that the Appellant's conviction is anything but safe. In the circumstances I allow this appeal, quash the conviction and set aside the sentence. The Appellant shall be released forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 7th November, 2008.

D. K. MARAGA

JUDGE