

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 383 of 2003

KARATINA PARSINTEI OLE SHUKURUAPPELLANT

-VERSUS-

REPUBLICRESPONDENT

JUDGMENT

The appellant herein Keratina Parsintei Ole Shukuru herein was charged with the offence of stealing stock contrary to section 278 of the penal code. The particulars of offence are that on 22nd day of January, 2003 at Olkonyo village Suswa in Narok District within Rift Valley province, the accused stole four sheep valued at Kshs. 8,800 the property of **PARSINTEI OLE KATAMPE** and the second count stated that on 22nd January, 2003 the accused stole one cow valued at Kshs.13,000/- the property of Parsintei Ole Katampe.

The accused pleaded not guilty to both counts and the case came up for hearing before the Resident magistrate. Mr. **P OKILE** who after a full hearing found the Accused guilty, convicted him and sentenced him to serve 3 years imprisonment with two strokes of the cane and a similar sentence for the second count but the sentences in both counts to run concurrently.

The Appellant being dissatisfied with the conviction and sentence has appealed to this court.

During the hearing the learned state counsel Mr. Koech conceded that the prosecutor who conducted the trial P.C Ihaji was unqualified and thus the proceedings in the trial court are a nullity.

As required of this court I have carefully reconsidered the record of the proceedings and it is clear that on 12/6/2003 and 7/7/2003 the hearing was conducted by the said police constable Ihaji. The criminal procedure code clearly specifies that the prosecutor should not be by an officer below the rank of an Assistant inspector of police. There are ample decisions in this regard from the Court of Appeal and I wish to refer to the case of **ELIREMA & ANOTHER VS REPUBLIC (2003) KLR** whereby this issue has been dealt with. Since the accused has nearly served the entire sentence, it will not be in the interest of justice to order a retrial.

Accordingly the appeal is hereby allowed and the Appellant is set free unless otherwise lawfully held.

Dated and delivered on 2nd March, 2006.

M. KOOME

JUDGE