

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Criminal Appeal 22 of 2005

(From Original Conviction and Sentence in Criminal Case No. 127 of 2005 of the Senior Resident Magistrate's Court at YATTA (M. MAUNDU- SRM) on

31.1.05

MICHAEL KYENGO MUEMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

MICHAEL KYENGO MUEMA was convicted on his own plea of guilty to the charge of Stealing Stock contrary to section 278 of Penal Code. He was sentenced to 4 years imprisonment. He was aggrieved by the sentence and so lodged his appeal.

Mr. O'mirera for the state opposed his appeal submitting that the plea was unequivocal and the sentence proper. He urged the court not to interfere with it.

I have considered this appeal. The appellants grounds of appeal was that the learned trial magistrate failed to consider his mitigation and to take into account his explanation of how he came by the livestock (two bulls) and therefore passed a very harsh and excessive sentence.

The facts of the prosecution case was that the appellant was found with the complainants 2 bulls 2 ½ weeks after they had been stolen. Taking into account that the appellant pleaded guilty to the charge, therefore saving the courts time, fact he was remorseful for the offence and fact that the bulls were recovered, four years imprisonment was excessive in all the circumstances of the case. I will allow the appellants appeal by setting aside the sentence of four (4) years and in substitution sentence him to 2 years imprisonment to run from the date of sentence.

Dated at Machakos this 31st May, 2006.

J. LESIIT

JUDGE