



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
OF KISII**

Criminal Appeal 18 of 2006

HOSEA BABU CHACHA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the Resident Magistrate's Court Criminal

Case No.1215 of 2005 at Kehancha – M. K. K. SEREM ESQ., R.M)

JUDGMENT

The appellant was convicted for the offence of handling stolen property contrary to S.322(2) P.C. and that of resisting arrest by a Police Officer contrary to S.253(b) P.C. He was sentenced to 10 years and 5 years imprisonment respectively.

Prosecution case was that the complainant's two red bulls and one red cow were stolen the night of 14th and 15th December 2005. He raised an alarm and neighbours joined in the search. Report was also made to the Anti-stock theft unit. The search team met with accused who shot arrows at them. He was however arrested. He led them to a maize farm where the red cow was tied. While there he escaped and ran away. He was chased and arrested. He was charged with the two offences.

Appellant denied the charges and said the stolen animal was planted on him.

I have considered the appeal. The conviction was proper. In fact the appellant should have been convicted on the main charge of stock theft if the trial court considered the doctrine of recent possession. The stolen animal was found early the next day. It was the appellant who led the chief, members of public to where the cow was tied in the maize plantation.

He knew where it was. He had tried to escape but was cornered.

When police found the appellant first he shot at them to avoid arrest.

They had to shoot in the air before he was arrested.

I therefore find the conviction was proper.

However I find the sentence of 10 years and 5 years respectively to be harsh and excessive. The animal appellant was found with was valued at shs.10,000/= . It was recovered. The appellant stated that

he was an orphan. He too was a first offender. Both sentences were harsh. I therefore set the sentence aside and substitute them with that of one (1) year imprisonment in each count to run concurrently from the date of the conviction.

Dated 9th November 2006

KABURU BAUNI

JUDGE

Delivered in presence of

cc. Mobisa

Mr. Chirchir for state

Appellant present in person.