



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL APPEAL NO. 125 OF 2003**

(Appeal against both conviction and sentence of the Senior Resident Magistrate's Court at Butere  
in Criminal Case No.326 of 2003. ( A. K. KANIARU, S RM

**CHARLES OMUKUMBA NYANGALA :::::::::::::::::::: APPELLANT**

**V E R S U S**

**REPUBLIC :::::::::::::::::::: RESPONDENT**

**JUDGEMENT**

In his Petition of appeal, the Appellant, Charles Omukumba Nyangala, put forward grounds of appeal in which he submitted that his plea of guilty was induced by harassment, threats, and torture. He further submitted that the learned trial magistrate did not consider his mitigation before sentencing him.

The appellant was charged on 6-5-2003 before the Senior Resident Magistrate at Butere, A. K. KANIARU, Esq., with the offence of stock theft c/s 278 of the Penal Code. The particulars of the charge were that the Appellant –

***“on the night of 15th and 16th April, 2003 at emuhaya village, Khusiko sub location, Mulwanda Location in Butere/Mumias within Western Province jointly with others already before court stole two heads of cattle valued at Kshs.21,000/= the property of Ezekiel Khati Obinaka.”*** The charge was read in Kiswahili to the Appellant. His answer to it was “yes it is true.” When the facts were read out to him, the Appellant stated in reply that they were true, whereupon the trial magistrate entered a plea of guilty. Called upon to mitigate against sentence, the appellant asked for leniency. After observing that the offence was rampant in the area, the trial magistrate noted that a stern action was necessary so as to deter commission of the offence. He sentenced the Appellant to imprisonment for 5 years and four strokes.

At no time during the proceedings before the trial magistrate did the Appellant complain to the court that he had been harassed, threatened, or tortured, and certainly the record does not reflect this.

There is no evidence that the plea of guilty was induced by fear on his part of being killed or tortured and the first time when these allegations were made were on appeal. I am unable to see any merit in the Petition of Appeal and it is my finding that the plea was unequivocal and that the appellant was convicted on his own unequivocal plea of guilty. He is not under Section 348 of the Criminal Procedure Code, Cap 75 entitled to appeal against conviction. His Petition on conviction is therefore misplaced.

As regards sentence, the offence of stock theft under Section 278 carries imprisonment for a period not exceeding 14 years plus hard labour. The sentence meted out was not manifestly excessive and I see no reason to interfere with it.

In the result, the appeal against conviction and sentence is dismissed on the ground that it has no merit. It is so ordered.

***Dated at Kakamega this 13TH day of May 2005.***

**G. B. M. KARIUKI**

**J U D G E**