

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA
Criminal Appeal 214 of 2003

(Appeal against the judgment of Mr. C. M. MWEBI, SRM in Mumias Criminal Case No.774 of 2003)

RASHID TABAI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant, RASHI TABAI, was charged with and convicted of the offence of stock theft contrary to section 278 of the Penal Code in Criminal Case No.774 of 2003 at Mumias and sentenced on 22/8/03 to imprisonment for a term of 5 years by the Senior Resident Magistrate, C. M. MWEBI Esq. following his own plea of guilty. The facts of the offence which the Appellant admitted showed that in the wee hours of 20th August, 2003 the Appellant had stolen the complainant's cow from a shed in the latter's homestead and was on his way when he was arrested by Provincial Administration Police in possession of the animal which was returned to the complainant. He was a first offender and in mitigation he prayed for leniency. The offence of stock theft contrary to section 278 of the Penal Code carries a maximum sentence of imprisonment not exceeding 14 years with hard labour. The trial magistrate stated that he took the appellant's mitigation into account.

The circumstances of the case show that the Appellant was remorseful, and a first offender who had pleaded guilty and that the animal had been recovered. He was clearly entitled to leniency. The sentence was clearly excessive having regard to these mitigating circumstances.

Accordingly, I reduce the sentence from a term of 5 years imprisonment to a term of three years imprisonment.

Dated at Kakamega this 27th day of July, 2005.

G. B. M. KARIUKI

J U D G E