

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appeal 493 of 2003

(From original conviction and sentence in Criminal Case No. 1900 of 2002 of the Resident Magistrate's Court at Nyahururu – C. N. Sifuna)

DAVID MWANIKI MWANGI.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant had been charged for the offence of stealing stock, contrary to **Section 278 of the Penal Code**. The facts for the prosecution case as stated in the Charge Sheet are as follows:

“On the night of 27th and 28th day of June, 2002 at Kahutha village in Nyandarua District of the Central Province stole 2 cows valued at Kshs.30,000 the property of ISAAC KIBE NJAMA.

Alternative Charge: “On the 28th day of June, 2002 at Mutanga area in Nyandarua District of the Central Province, otherwise than in the court of stealing, dishonestly retained 2 cows knowing or having reason to believe them to be stolen or unlawfully detained.”

From the record, it is apparent that the Appellant was arraigned in Court on 3rd July, 2002 and he denied the charge. Consequently, the facts were **not** read out to him due to the above position. It is surprising and erroneous for the learned Magistrate viz, **C. N. Sifuna** to have called for a Probation Report and purport to act on the same.

Secondly, the Court concurs with Mr. Gumo, Assistant Deputy Public Prosecutor that the case was conducted by **Cpl. Shibeka** who was not qualified to prosecute the case as envisaged by **Section 85 of the Criminal Procedure Code**. I also concur with him that the proceedings were a nullity *ab initio*.

In view of the above, I hereby quash the conviction and set aside the sentence of 4 years imprisonment and hard labour. The Appellant should be released forthwith unless held lawfully.

Judgment written, read and signed in open Court.

MUGA APONDI

JUDGE

25TH JULY, 2005