



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NYERI  
Criminal Appeal 50 of 2002**

**SAMUEL KIRUBI GITONGA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(Appeal from original judgment and conviction in District Magistrate's Court at  
Kigumo in Criminal Case No. 60 of 2002 dated 24 th January 2002 by P. J. Mwangulu –  
D.M.I –Kigumo)  
Criminal Appeal 51 of 2002**

**BENSON KANGETHE KARIUKI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(Appeal from original judgment and conviction in District Magistrate's Court at  
Kigumo in Criminal Case No. 60 of 2002 dated 24th January 2002 by P. J. Mwangulu –  
D.M.I –Kigumo)  
Criminal Appeal 51 of 2002**

**REASONS FOR JUDGMENT**

Samuel Kirubi Gitonga the appellant in HC.CR.APP. No. 50 of 2002 (hereinafter referred to as 1st Appellant) and Benson Kangethe Kariuki the appellant in HC.CR.APP. No. 51 of 2002 (hereinafter referred to as the 2nd Appellant) were jointly charged before the District Magistrate at Kigumo for the offence of stock theft contrary to section 278 of the Penal Code.

The 1st Appellant was convicted on his own plea of guilty and was sentenced to serve 7 years imprisonment with 3 strokes of the cane. The 2nd Appellant pleaded not guilty and was tried, convicted and also sentenced to serve 7 years imprisonment and 3 strokes of the cane.

Both appellants appealed against conviction and judgment. On the 24th July 2005 having heard the appeals in respect of both Appellants I allowed the appeal on sentence and reduced the sentence of each appellant to the period already served.

This was because the appeal against conviction had no merit, the 1st Appellant having been convicted on unequivocal plea of guilty.

As for the 2nd Appellant the evidence against him was completely overwhelming, as he was seen with the complainant's calf just hours after it had been stolen. He tried to convince Francis Kirubi Gitonga (P.W.3)

to look for a buyer for the calf claiming that the calf was his. The 2nd Accused even negotiated with Joram Njagi (P.W.4) to whom he purported to sell the calf. The calf was properly identified by the complainant as belonging to him. The evidence against the Appellant was therefore sufficient to sustain the charge.

Both Appellants having been treated as a 1st offender and the 1st Appellant having even pleaded guilty to the charge the sentence of 7 years imprisonment and 2 strokes for theft of one calf was rather excessive. It was for this reason that I reduced the sentence to the period already served which was over 3½ years imprisonment. I do therefore dismiss both the appellant appeals against conviction but allow the appeal against sentence as aforestated.

Those shall be the orders of the court.

*Dated signed and delivered this 19th day of August 2005.*

**H. M. OKWENGU**

**JUDGE**