

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL 442 OF 2003

(From original conviction and sentence in Criminal Case No. 975 of 2003 of the Senior Resident Magistrate's Court at Molo – Mr. R. K. Kirui)

PHILIP KIMUTAI KOECH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant has appealed against the original conviction and sentence that was passed on him by the Senior Resident Magistrate Court in Molo in **Criminal Case No. 975 of 2003**. In that case, the Appellant had been charged for the offence of stealing stock, contrary to **Section 278** of the Penal Code. The facts of the prosecution case as stated in the Charge Sheet are as follows:

“During the night of 19th, 20th April, 2003 at Sirikwa area of Stapol, Molo in Nakuru District of Rift Valley Province stole two heads of cattle valued at Kshs.30,000 the property of Richard Cheruiyot.”

When the Appellant was arraigned in Court on 5th May, 2003, he pleaded “**guilty**” to the charge and he was convicted accordingly. Consequently, the learned trial Magistrate viz, **Mr. R. K. Kirui**, Senior Resident Magistrate sentenced him to 5 years imprisonment plus two strokes of the cane. During the hearing of the appeal, the Appellant informed the Court that he had already served 2½ years of his sentence. He also informed the Court that he had qualified as a carpenter and that he was ready to assist his community in case, he is released. He concluded by stating that the cattle belonged to his father.

On the other hand, the State through **Mr. P. Gumo**, Assistant Deputy Public Prosecutor opted to leave the matter to the discretion of the Court.

This Court has carefully perused the above. It is apparent that during the hearing of the appeal, the Appellant opted to confine himself to the sentence that was imposed on him. Having looked at the total circumstances and value of the stolen head of cattle, I am of the considered opinion that the appellant has been punished appropriate. Any further incarceration of the Appellant is **not** necessary.

In exercise of my discretion, I hereby reduce the sentence of 5 years imprisonment to the period already served. However, the Appellant will have to receive 2 strokes of the cane before being released. The reasons is that corporal punishment was lawful when the sentence was being passed.

It is only to that extent that the appeal succeeds.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of the Appellant and Mr. Njogu, State Counsel.

MUGA APONDI

JUDGE

28TH SEPTEMBER, 2005