

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
Criminal Appeal 128 of 2003

*(From Original conviction (s) and Sentence (s) in Criminal Case No. 101 of 2003 of
the Resident Magistrate's Court at Tawa (P.N. MORIGORI RM) on 15/4/03*

MBITHI NDAMBUKI APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G M E N T

The appellant was convicted of stock theft in respect of which he had stolen one cow. He was sentenced to serve jail for 7 years. He appeals against conviction, although he pleaded guilty, and against sentence. The state concedes the appeal because the prosecutor who conducted the plea was not qualified to do so under Section 85 of the Criminal Procedure Code. The state however, also admitted that the plea itself was bad because the guilty plea and the conviction that followed were not formally entered in the record. This means that even if the state did not concede the appeal, the appeal would independently have succeeded.

There is no dispute about the fact that the trial was a nullity. The only other question to be resolved, is whether there should be a retrial. The appellant had pleaded guilty and was convicted and sentenced to 7 years imprisonment. He has served 2 ½ of the sentence for the one cow he stole. This period is not unsubstantial as Mr O'Mirera, asserted, considering the circumstances of the case. It would, in my view, be against the interest of justice to expose the appellant for another period, especially where the stolen cow was recovered and the complainant got it back. The two years served also are good enough to teach the appellant not to steal again and to inform others not to steal other peoples' properties.

For these reasons the court quashes the conviction (which in any case does not formally exist) and sets aside the sentence of 7 years imprisonment. The appellant is to be released forthwith unless otherwise lawfully held in prison. It is so ordered.

Dated and delivered at Machakos this 5th day of December 2005.

D.A. ONYANCHA

J U D G E