

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 334 OF 2003

**(From Original Conviction and Sentence in Criminal Case No. 2021 of 2003
of the Senior Resident Magistrate's Court at Kwale L.N. Mbatia, SRM)**

MUNYIKA BATI KAMANZIA APPELLANT

- Versus -

REPUBLIC RESPONDENT

J U D G M E N T

The Appellant was on his own plea of guilty to the offence of stealing stock contrary to section 278 of the Penal Code convicted and sentenced to six years imprisonment. He has appealed against that sentence. In his submissions before the court he says he is 56 years old. He is a widower left with 7 children. He says it was due to satanic influence that he went stealing. He is now repentant and pleads that his case be treated mercifully. He says during his arrest he suffered a fracture of the right leg.

The Assistant Deputy Director of Public Prosecutions on her part submitted that the sentence cannot be said to be harsh given the fact that the maximum sentence provided for the offence is 14 years imprisonment. She further submitted that the offence of stock theft is serious as it deprives the victims of their means of livelihood. Although the appellant is an old man he should serve his sentence.

I have considered the rival submissions made by the Appellant and the Asst. DPP. The offence of stock theft is a serious one. In some cases people have been killed in the course of stealing. The Appellant is however an old man. He is a widower left with 7 children to take care of. He appears repentant. The stolen cattle were all recovered. Taking into account all these factors I consider the sentence of 6 years imprisonment a little harsh. Accordingly I reduce it to three years imprisonment to run from the date of conviction. Appellant to be taken to hospital.

DATED this 26th day of February 2004.

**D.K. Maraga
Ag. JUDGE**