

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 443 OF 1982

(From Original conviction and sentence in Criminal Case No 258 of 1982 of the Resident Magistrate Nyeri (BW Kamunge)

JOHN MUCHIRI GITARI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was convicted of stock theft, c/s 278 of the Penal Code and was sentenced to serve the minimum mandatory prison term of seven years. The facts were that the appellant stole one cow on the night of July 15/16, 1982 and he was found in possession of it the next morning. He has not appealed against the conviction and rightly so.

Mr Ole Kaparo for the appellant submitted that the court should have considered granting probationary treatment to the appellant or given him discharge u/s 35(1) Penal code (Cap 63) rather than imposing the minimum sentence of seven years' imprisonment. I have said it before that the police should consider bringing of the charge for simple theft, c/s 275, Penal Code (Cap 63) where the theft is of a cow, a bull, a heifer or an ass or two. The provisions of Section 278, Penal code (Cap 63) be invoked for big cattle rustlers as the legislature never intended to apply them for theft of one cow or so. The sentence must always be proportionate to the gravity of the crime.

Inhuman sentence do not serve the cause of justice

In the instant case the appellant had a past clean record and the stolen cow was recovered almost soon after the theft. In the circumstances, I substitute a conviction for theft, Section 275, Penal Code, and a sentence of 2 1/2 years imprisonment.

V V PATEL

JUDGE

6.6.1983