

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.350 OF 2003

(From original conviction and sentence of the SRM's court at Nyamira in
Criminal case No.809/03.)

JEREMIAH MATUNDA NYARESO APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

Appellant JEREMIAH MATUNDA NYARESO was charged jointly with ASUMA ONGERA MAYIEKA for the offence of stealing stock c/s 278 Penal Code in that on the night of 14th and 15th October 2003 at Charachani sub-location with others not before the court jointly stole two cows the property of ELIZABETH BOERA NYABURI.

Apparently the 2nd accused absconded while on bond before judgment was written and delivered. The appellant was convicted and sentenced to two years imprisonment.

I have considered the appeal and the evidence. The evidence was overwhelming and the appellant was properly convicted. The complainant ELIZABETH BOERA NYABURI who was PW2 told the court how she found her two cows missing from their shed in the morning of 15th October 2003. She raised an alarm and villagers started looking for the missing cattle. On 16/10/03 a day after the theft the accused was found with one of the cows and meat, which were hidden. Apparently the other cow had been slaughtered and meat divided. PW2 positively identified the live cow as hers and the skin and the head of the slaughtered cow. The appellant when confronted by the search team ran away but was chased and arrested.

The magistrate was right to conclude that he was one of those who stole the two cows. The period between the theft and when he was found with the stolen animals was only one day, which is a clear indication that he was involved in the theft. He tried to run away which again points to his guilt. The magistrate considered his defence that the cows were taken to him, as he was a traditional doctor to go and treat a sick person and properly rejected it as shown.

I therefore find the conviction was based on a sound consideration and a proper evidence. I uphold the same.

As to the sentence the value of the stolen animals was over shs.30,000/=. I don't think sentence of 2 years was excessive or harsh. I will decline to interfere with the same.

All in all I find appeal has no merit and it is dismissed.

Signed, dated and delivered on 26/5/04.

KABURU BAUNI

JUDGE