

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.50 OF 2004

(From original conviction and sentence of the Chief Magistrate's Court at Kisii

in Criminal Case No.730 of 2003 –L. KOMINGOI ESQ., R.M)

PAUL MAKORI WAKO.....APPELLANT

VERSUS

REPUBLIC RESPONDENT.

JUDGMENT

Appellant PAUL MAKORI WAKA was tried and convicted by SRM Kisii for the offence of stealing stock contrary to s.278 of the Penal Code. He was jailed for four (4) years. He now appeals against the conviction and sentence.

The complainant had told the trial magistrate that her bull had gone missing from the grazing field in the afternoon of 2nd April 2002. She received an alarm and villagers started looking for it.

PW2 who trades in livestock met the appellant on 3rd April 2002 near Miriri Market. Appellant who was known to him had a brown bull he was selling. PW2 bought it for shs.6000/-. He later sold it for shs.6600/=. On the following day those looking for the bull went to his home. He told them where he had sold the bull. He took them there and it was recovered. He led them to appellants home. He was arrested.

I find the evidence in the lower court was straightforward and proper. First the appellant had been seen by PW5 Samwel Ombui Oigara on 2nd April at 4.30 p.m. driving the bull towards Nyaboterere. The bull was red. PW2 explained how the appellant sold the bull to him and then disappeared before he could produce his identity card.

There was no doubt that appellant was the one who stole the bull. It was stolen on 2nd April and he was found with it barely a day later on+ 3rd April 2004. I find he was properly convicted and I uphold the conviction.

As for sentence I find it was excessive. Appellant was a first offender. He pleaded for leniency. The bull was recovered. Jail term for four years was therefore harsh. I set aside the sentence of four years and substitute it with one of one (1) year imprisonment.

It is so ordered.

KABURU BAUNI

JUDGE.

28/7/04

Dated and delivered on 28th July 2004.

KABURU BAUNI

JUDGE.

28/7/04