



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL APEPAL NO.257 OF 2003**

**(From original conviction and sentence in Criminal Case**

**No.33 of 2002 of the Chief Magistrate's Court at**

**Kisii – S. M. S. SOITA. ESQ., S.R.M)**

**EVANS BANGE MONAYO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant was convicted by the Principal Magistrate Kisii for the offence of stealing stock c/s 278 of the Penal Code. He was sentenced to seven (7) years imprisonment.

The particulars were that on the night of 7th and 8th January 2003 at Raging sub location jointly with others he stole one cow valued at shs.8000/= property of NENWEL MOSOTA MANYURA.

In his petition of appeal the appellant stated that the magistrate erred in convicting him with an exhibit not proved to have been stolen. He further said the court did not observe contradictions and inconsistencies in the evidence tendered.

Lastly he stated that sentence of 7 years was manifestly excessive.

The State opposed the appeal on conviction and submitted that the evidence in the lower court was enough and the appellant was properly convicted. Indeed the evidence in the lower court was overwhelming. PW1 the complainant told the court that he found his cow missing from the boma early in the morning of 8th January 2003. He had tethered it in the boma the previous evening. He raised an alarm and neighbour answered him. They started to track it but lost hoof marks.

However early that same morning Zachariah Ondieki (PW2) Ass. Chief of Mwamosioma sub location was going to work at 7 a.m. When he met appellant driving a cow. It was very early and he became suspicious. He stopped and questioned him over the cow. He told PW2 he had bought it at Bridge Camp. When challenged to show where he bought it he took to his heels. He was however chased and arrested and taken to Kisii Police Station where he was detained together with the cow. The complainant later learnt about it and he went to the station and positively identified the cow. It was the same cow stolen from his boma. It cannot be true therefore that appellant was convicted for an exhibit not proved to have been stolen.

There was no contradiction in the evidence. PW2 the Ass. Chief clearly said he arrested the appellant

with the stolen cow. There were no contradictions to that.

I therefore find that the appellant was properly convicted and I uphold the conviction.

As for sentence the appellant was a first offender. The value of the stolen cow was shs.8000/-. The cow was recovered and returned to the complainant. In the circumstances the sentence of 7 years imprisonment was excessive. I set the same aside and substitute it with that of 2(two) years imprisonment.

It is so ordered.

**KABURU BAUNI**

**JUDGE.**

**21/7/04**

Delivered on 21st July, 2004

**KABURU BAUNI**

**JUDGE.**