



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL APPEAL NO. 248 OF 2003**

**(From original conviction and sentence of the SRM's court at Nyamira in criminal case No. 541 of 2003**

**JOSHUA AMIMA MATUNDA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT:**

The appellant was convicted by the SRM Nyamira for the offence of stock theft c/s 278 of the Penal Code. He was sentenced to 4 years imprisonment.

It had been alleged that on the night of 30th June and 1st July 2003 at Rongo Pala sublocation with others not before the court stole one cow valued at sh.7000/= property of JAMES OGWENDO OTEWA.

The appeal is against the conviction. In his memo of appeal appellant stated that he was convicted on evidence of only one witness and that the evidence was rehearsed and there was witch hunting. He further stated that the court did not consider his defence.

The evidence in the lower court was sufficient to convict the appellant as he was.

Complainant explained how his cow went missing from the boma on the night of 30th June and 1st July 2003. He discovered it missing early on 1/7/2003. PW6 Charles Abincha told the court that he found the appellant at 5 a.m. with the stolen cow. He flashed his spotlight and saw him well. The appellant ran away. PW6 called PW5 and they pursued him. They know him well before. They found him changing clothes in an abandoned shed.

There was no doubt that PW6 had identified appellant as the man he found driving the cow away. The cow was recovered, and PW1 the complainant later identified it.

There was no reason for PW6 to give false evidence against appellant.

The learned magistrate carefully analyzed all the evidence. He also considered accused's defence as shown on page 2 of the judgment. He said he did not believe his contention that he was wrongly identified.

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

Appellant had not appealed against the sentence but on the hearing day he seemed to be mitigating. He told court that he has one parent who has one leg amputated.

The value of the cow stolen was shs.7000/=. Appellant was a first offender and he prayed for leniency. In the circumstances sentence of 4 years imprisonment was harsh. I set it aside and substituted it with a sentence of 15 months imprisonment.

It is so ordered.

**KABURU BAUNI**

**JUDGE**

**21/10/04**

**Mr. Chirchir for Respondent.**