

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL APPEAL NO.341 OF 2002

**(From original conviction and sentence of the Resident Magistrate's Court at
Oyugis
in Criminal Case No.522 of 2002 –N. NJAGI ESQ., S.R.M)**

DUNCAN ONYANGO OKIRI APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

Appellant was convicted by Senior Resident Magistrate Oyugis for the offence of stealing stock contrary to section 278 Penal Code. He pleaded guilty and was sentenced to 8 years imprisonment.

His appeal is against sentence only. However the learned Senior State Counsel in conceding the appeal pointed out that the plea was equivocal as facts were never read to the appellant. I quite agree. The learned magistrate took the plea in the most casual manner. The charge was a serious one and the sentence meted out long.

Record shows that after reading the charge to the appellant and recording a plea of guilty the magistrate recorded: "**FACTS** R.A.P.C.5." That is not a proper way of recording facts. The prosecution should have read the facts to the appellant who should have been asked if he agreed with them or not. On that note alone the appeal will succeed.

The above aside the sentence meted out was excessive. Appellant was alleged to have stolen 3 goats worth shs.2,900/=. He was a first offender and pleaded for leniency. Sentence of 8 years imprisonment was excessive and harsh in the circumstances.

I allow the appeal quash the conviction and set aside the sentence. Appellant be set at liberty forthwith.

Dated 1st December 2004

KABURU BAUNI
JUDGE