

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.356 OF 2000

**(From original conviction and sentence in Criminal
Case No.357/2000 of the Senior Resident Magistrate's
Court at MOLO -J. KIARIE (S.R.M.)**

**SIMON KIPCHIRCHIR RUTTO.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

J U D G M E N T

The Appellant has appealed against the sentence of five years imprisonment for STEALING STOCK to wit five head of cattle valued at Kshs.300,000/-. He pleaded guilty to the charge. He pleads for leniency on grounds he has three children and his parents are very old.

The appeal is opposed by the Learned State Counsel who urged the court to find that the Appellant is a habitual cattle thief on grounds he was convicted for similar offence in case No.358/2000. He urged court to confirm the sentence and add corporal punishment which the court forgot to impose.

With respect, there is no justification to submit that the Appellant is a habitual cattle thief just because of a similar conviction. The Appellant does not deny the conviction. However, the other case file is not before the court and the circumstances of that offence are unknown to the court.

The Appellant pleaded guilty to the charge showing his remorsefulness. He saved court's time. He has a young family. I will allow the appeal by reducing the sentence to 3 years imprisonment. The Appellant should in addition receive one stoke of the cane subject to medical fitness to receive such punishment.

Orders accordingly.

Dated and delivered at Nakuru this 13th day of March, 2003.

**JESSIE LESIIT
JUDGE**