

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 497 OF 2002

**(Being an Appeal against Sentence in Criminal Case No. 2397 of 2002 by
the Senior Resident Magistrate's Court at Kwale –L.N. Mbatia**

NYUNDO ZUMA BEJA APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

J U D G E M E N T

NYUNDO ZUMA BEJA the Appellant in this case was charged with two Counts before the Senior Resident Magistrate's Court at Kwale. On Count I he was charged with stealing Stock Contrary to Section 278 of the Penal Code. He was Convicted on his own Plea of Guilty and Sentenced to serve 8 years imprisonment with 4 strokes of the cane. On record it shows the Court did not read out the Charge on Count II and this I think is because at the same time it was indicated on the Charge Sheet that the said charge was an Alternative one.

In his appeal, the appellant says the Sentence is harsh and he is young, and was under Age. The State Counsel on her part submitted that the Appeal should be allowed as Appellant was under age and the maximum period he would be held in a Boastal Institution was 3 years.

I have carefully read the short record and note that at the time of Conviction and Sentence, the Appellant said nothing about his age. This Court did however request for an Age Assessment and a report by the Doctor In-Charge of the Dental Unit at the Coast General Hospital Dr. OWIT A.O. filed a report dated 5.6.03. He has assessed the Appellant's Age as 19 years. The Appellant was convicted on 3.12.02 and therefore he could not have been below 18 years then since a year has not gone by. In the circumstances he cannot benefit from the point of his age.

I have further considered the nature of the offence. He and others stole 32 Heads of cattle. This is a serious offence and the Court does not consider the Sentence of 8 years and 4 strokes of the cane as being excessive. The law provides for a maximum Sentence of 14 years together with Corporal punishment. In the circumstances I find no reason to interfere with the Sentence and the Appeal is hereby dismissed.

Dated and Delivered at Mombasa this 30th day of July, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE