

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 321 OF 2002

**PETER KIPRUGUT MARITIMAPPELLANT
VERSUS**

REPUBLICRESPONDENT

(Appeal from Original SRM Nyando Criminal Case No. 583 of 2001)

JUDGMENT

The appellant was charged, tried and convicted of the offence of stealing stock contrary to section 278 of the Penal Code. He has now appealed against his conviction and sentence as indicated by our Mr. Mutai from the state the Court convicted the appellant of the offence by the application of the doctrine of recent possession when the dates of the theft and when he was found with the animals were not before the Court. Secondly the appellant had given explanation of having been found in possession. There was no evidence that Andrea Arap Kirui who had allegedly employed the appellant to drive the animals was interviewed and called as a witness.

Bearing those factors in mind I am not satisfied that the prosecution proved its case beyond reasonable doubt. The appeal is therefore allowed and the conviction of the appellant is therefore quashed. The sentence is set aside and it is directed that he be released forthwith.

Dated and delivered this 24th October, 2003.

**B.K. Tanui
JUDGE**