



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 387 of 2002**

**(From original conviction and sentence in Criminal Case No. 1004 of  
2001 of D.M.'S Court at Kigumo – P. MWANGULU – D.M.1**

**PETER MURIGI CHOMBA .....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

**Peter Murigi Chomba** hereinafter referred to as the appellant is aggrieved by the judgment of the District Magistrate Kigumo who convicted the appellant for the offence of Handling stolen property C/S 322 (2) Penal Code and sentenced him to serve 7 years imprisonment with hard labour and 5 years police supervision after sentence.

The Appellant was charged with stealing stock contrary to section 278 of the Penal Code with an alternative charge of Handling stolen goods contrary to Section 322 (2) of the Penal Code . The subject of the charge in both the main count and the alternative count was a Bull valued at Kshs. 3,000/- belonging to the complainant Esther Njeri Muturi.

The evidence laid before the trial court was that on the night of 4th & 5th September 2001 the complainant's bull was stolen from her cattle boma. She reported the matter to the Asst. Chief and thereafter sent her son Richard Maina Muturi (P.W.2) to look for the bull. After visiting various markets making inquiries, on 12.9.01 P.W.2 received information acting on which he proceeded to the home of the appellant accompanied by P.W.3 Toney Mbau Kiven and P.W.4 Samwel Gikuru Njoroge . They found the appellant and his mother and while at the home they heard the sound of a bull in the coffee plantation within the home. P.W.2 went and confirmed that the bull was their missing bull. When he went back to the house the appellant started running away. P.W.2 screamed and members of the public and P.W.3 & 4 came to his assistance and the appellant was arrested and taken to the police station together with the bull.

The Appellants defence was in one sentence that he made a mistake to buy a stolen bull without knowing.

While it is not in dispute that the Appellant was in possession of the bull which was positively identified as belonging to the complainant, there was no evidence directly linking the appellant with the theft of the bull. The trial magistrate did not however consider the doctrine of recent possession given that the appellant was found with the bull just about a week after it was stolen. The Appellant's explanation that he bought a stolen bull without knowing was not satisfactory. His conduct when the bull was discovered at his home was not consistent with innocence. The trial magistrate was therefore right in rejecting the appellant's defence but in view of recent possession ought to have convicted him of the main charge rather than the alternative charge of handling stolen goods.

I would therefore set aside the appellant's conviction for handling stolen goods and substitute it thereof with a conviction for stealing stock contrary to Section 278 of the Penal Code.

Given the fact that the appellant was treated as a 1st offender and the value of the stolen bull ,the sentence of 7 years imprisonment imposed was manifestly excessive. I would therefore reduce the

sentence to 3 ½ years imprisonment with hard labour.

The upshot of the above is that I set aside the conviction for the offence of Handling stolen goods C/S 322(2) Penal Code and substitute thereof a conviction for stealing stock C/S 278 P.C. The sentence of 7 years imprisonment with hard labour and 5 years police supervision is reduced to 3 ½ years with hard labour.

To this extent only does this appeal succeed.

Dated Signed and Delivered this 18th day of December, 2003.

**H.M. OKWENGU**

**JUDGE**