



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.257 OF 1999

**(From original conviction and sentence in
Criminal Case No.2062 of 1999 of the
S.R.M.'S Court at MOLO)**

KONANA ROIKO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged with the offence of stealing stock contrary to Section 278 of the Penal Code and was convicted as charged and sentenced to 7 years imprisonment by the Senior Resident Magistrate Mr. Kiarie on 16th November, 1999.

The appellant appealed against both the conviction and sentence. The appellant at the hearing of the appeal urged the court to set aside the conviction and set aside the sentence. The appellant put forward an alibi during appeal. His contention was that he was on a visit to his uncle's place and the incident happened in his absence.

Mr. Oriri Onyango for the State urged the court to sustain the conviction on the grounds that the foot prints of the stolen sheep were followed up to the forest. At that forest the appellant was found redhanded feeding on the carcass of one sheep which he had slaughtered.

It is trite law that when an accused raises a defence of alibi it is the duty of the prosecution to displace the alibi. I believe the evidence of P.W.1, P.W.2 and P.W.3 that the appellant was found redhanded. This displaces the alibi raised by the appellant. In the circumstances the conviction was proper. The appeal against conviction is thereby dismissed.

As regards appeal against sentence of 7 years the appellant's plea that the same was excessive is not without good cause. The total number of sheep stolen were 20. Recovery was made of 19 leaving one which was slaughtered and which the appellant was found feeding on the carcass.

The trial magistrate should have taken this into account while sentencing the appellant.

Mr. Oriri Onyango did not support the sentence and pointed out, in my view rightly, that the learned Senior Resident Magistrate did not give reasons for arriving at 7 years. That in any event statute law

(Miscellaneous Amendment) Act No.22 of 1987 changed the law as related to stock theft to a sentence for a period of not exceeding 14 years. That since the offence was committed in 1999 the magistrate should have meted out a more lenient sentence. I agree.

In the result the appeal against conviction is dismissed, but the sentence of 7 years is substituted by reducing the sentence to the period already served. The appellant is hereby set free unless lawfully held for some other lawful cause.

DATED and DELIVERED AT NAKURU on 22nd day of February, 2002.

N.R.O. OMBIJA

JUDGE

Delivered in the presence of the Appellant – present in person.

Mr.Makau – State Counsel - for State.