

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.205 'A' OF 2002

DANIEL KIOKO KISILU APPELLANT

VERSUS

REPUBLIC RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 205B OF 2002

MWEMA MUTUA APPELLANT

VERSUS

REPUBLIC RESPONDENT

**Being an appeal from Original Conviction and Sentence in Criminal Case
No.963 of 2002 of Senior Resident Magistrate's Court at Kwale –L.N.
Mbatia, SRM)**

JUDGMENT

The appellants who are represented by Mr. Akanga appeal on the grounds set out in the Petition of Appeal. Firstly Akanga says that the handwritten notes of trial magistrate appear as if she wanted to write "Not True" but in fact wrote "It is true". This is not disclosed in the typed certified record. The court has to move on the copies which are certified as correct. Secondly he submits that the appellants did not understand the nature of the offence and therefore the plea of Not Guilty should be entered. This means that the appellants would have to go to trial again. He says when they pleaded they were beaten and therefore not able to understand. This submission is not supported by evidence. The perusal of the record shows that the facts were read out to the appellants in Kiswahili language to which they did not object. They spoke in mitigation. I find that they did understand the particulars of the charge and these submissions to the contrary are but an after-thought. I therefore uphold the conviction, but on the question of sentence, it is to be noted that the goats were returned to the owner and these persons are first offenders.

They are also young persons. The custodial sentence is therefore not appropriate. They should be given an opportunity to reform. In the circumstances I set aside the sentence of imprisonment for 3 years and the 2 strokes of the cane. Instead I substitute with a Community Order under the Community Service Act to serve public service for a period of 3 years.

Dated at Mombasa this 18th Day of July, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

