



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 98 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 641 of 1999 of the Principal Magistrate’s Court at Kitui, K. O. Ogola Esq. on 19.11.99)

PETER MWEMA MUSILI ::: APPELLANT

VERSUS

REPUBLIC ::: RESPONDENT

Coram: J. W. Mwera J.

Appellant not wishing to be present

Orinda State Counsel for Respondent

C.C. Muli

J U D G E M E N T

The appellant faced 2 counts of stock theft C/S 278 Penal Code in that on 7.6.99 at Mwitika village, Kitui District he stole one bull worth Sh.10,000/= the property of Mutiso Makau. On the same day he also stole a bull of Mbete Kula.

After trial the appellant was found guilty on both counts and given 7 years imprisonment hard labour and 4 strokes of the cane on each count. The sentences were to run concurrently with effect from 10.11.99. He appealed on the basis that the case was not proved against him beyond reasonable doubt. That his defence was ignored and the prosecution evidence was unreliable.

The appellant was unable to attend the hearing of his appeal at his own expense. The Learned State Counsel supported the conviction and sentence.

On a review of the lower court proceedings and judgement this appeal has no merit and must be dismissed as regards conviction. The appellant was found at Mutha 10 market about to sell the bull of Mbete Kula (see count 2) – a day or two after the theft. He was arrested and taken to a local police post. The appellant on interrogation revealed that the other bull was at his home. He accompanied Mutiso Makau (P.W.1 i.e Count 1) with others in search of the stolen bulls and found the bull at the home of the

appellant. The appellant had even endeavoured to flee when found at Mutha market (see Ivuku Kiseleve P.W.2). The denial in the defence was worthless. From all this evidence the Learned Trial Magistrate had cogent evidence to convict as he did.

As for the sentence the appellant was treated as a first offender. The 2 bulls were recovered. The maximum prison term under S.278 Penal code is 14 years. The lower court handed down 7 years. Although a lawful sentence but in the circumstances justice will still be served even if the same is set aside and substituted with one of four (4) years. The strokes are also reduced to three (3) on each count and the hard labour part is set aside as S.278 Penal Code does not provide for it. The sentences to run concurrently.

Save for the lowering of the prison term, the strokes of the cane and setting aside hard labour, this appeal is dismissed.

Judgement accordingly.

Delivered on 26th March 2001.

J. W. MWERA

JUDGE