



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.66 OF 2001**

**(From Original Conviction and Sentence in Criminal Case No.728 of 2000 of the Resident magistrate's Court at Kaloleni –K. Muneeni, Esq., - R.M.)**

**JOSPAT KAHINDI CHARO.....APPELLANT**

**=V E R S U S=**

**REPUBLIC.....RESPONDENT**

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

The appellant was convicted of Stealing stock contrary to Section 278 of the Penal Code and was sentenced to 2 years imprisonment with 4 strokes of the cane. His appeal to this court is against that conviction and sentence. The prosecution case was that on the 24.8.2000 PW.1's cow was stolen and at about 11 a.m. the appellant and two others were found driving the said stolen cow. They were arrested by PW.2 Assistant Chief of the area and were taken to Police where they were charged with this offence. The two people who were charged together with the appellant admitted the charge and were convicted and sentenced. But the appellant denied any involvement in the theft. In his defence he denied to have been together with the two who pleaded guilty. He said the two were walking ahead of him but denied that they were together.

PW.2 in his evidence stated in his evidence that he had met two young men driving a cow and he arrested them. This supports the evidence of the appellant that he was not in the company of the other two who were with him and who had pleaded guilty to the charge. There was no evidence linking the appellant to the charge and it follows therefore that it would be unsafe to allow the conviction to stand.

I allow the appeal, quash the conviction and set aside the sentence and order that the appellant be set at liberty unless otherwise lawfully held.

**Dated and delivered at Mombasa this 9th day of October, 2001.**

**J.L.A. OSIEMO**

**J U D G E**