



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appeal 246 of 2000**

**(From Original Conviction and Sentence in Criminal Case No.425 of 1998 of the Senior Resident Magistrate's Court at Kajiado).**

**RAYMOND KIPKEMEI ROTICH.....  
.....APPELLANT**

**VERSUS**

**REPUBLIC.....  
....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO.28 OF 2000**

**(From Original Conviction and Sentence in Criminal appeal No.425 of 1998 of the Resident Magistrate's Court at Kajiado).**

**JAMES KASMIR.....  
.....APPELLANT**

**VERSUS**

**REPUBLIC.....  
RESPONDENT**

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

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.246 OF 2000**

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

Criminal Appeals **Nos. 246/00 OF NAIROBI HIGH COURT** and **NO.28/2000 OF HIGH COURT MACHAKOS** are consolidated.

The two appellants were accused Nos. 2 and 3 in the Kijiado Magistrate's Court case No.28 of 2000. Both of them were convicted together with the two others, i.e. the 1<sup>st</sup> and 4<sup>th</sup> accused in the said case.

The convictions of all the above four were for stock theft, contrary to section 278, Penal Code.

The 1<sup>st</sup> and 2<sup>nd</sup> accused were sentenced to 18 months imprisonment each whereas the 3<sup>rd</sup> and the 4<sup>th</sup> were sentenced to 36 months imprisonment each on 10<sup>th</sup> March, 2000.

I do not know whether or not the 1<sup>st</sup> and the 4<sup>th</sup> accused filed their appeals. However, I have still considered the evidence against them together with the 2<sup>nd</sup> and 3<sup>rd</sup> appellants.

It was established that the 1<sup>st</sup> accused, **DAVID SALIMOI** was found in possession of the skins of some of the stolen animals.

The evidence against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused was only that of the 1<sup>st</sup> and who had named them to the Police as the ones who slaughtered the animals at his place. At the trial the said 1<sup>st</sup> accused made unsworn defence. In it, it be noted, he said that he did not know that anybody had slaughtered cattle at his place. Be what it may, it is clear that apart from what the 1<sup>st</sup> accused, **DAVID** said to the Police there was not an iota of evidence to connect the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused with the stock theft. The 1<sup>st</sup> accused was an accomplice and the required corroboration was not there at all.

For the reasons given, the appeals of the two appellants viz, **RAYMOND KIPKEMEI ROTICH** and **JAMES KASHIMIR** are allowed. Their convictions are quashed and sentences set aside. On revision I also quash the convictions of **TENGE OLE KONGO**, the 4<sup>th</sup> accused and set aside his sentence. I order that all the above three be released forthwith.

Dated at Nairobi this 20<sup>th</sup> March, 2000.

V.V. PATEL

JUDGE