

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE
CRIMINAL APPEAL NO. 145 OF 1999

**(From Original Conviction and Sentence in Criminal Case No. 641 of
1999 of Resident Magistrate's Court at Makindu, O. J. Ochako Esq., on
25.2.2000)**

JEREMIAH MWEMA MUINDI ::::::::::::::::::::::::::::::: APPELLANT

VERSUS

REPUBLIC ::::::::::::::::::::::::::::::::::::::: RESPONDENT

Coram: J. W. Mwera J.

**Appellant not wishing to be present
Mrs. Murungi State Counsel for Respondent
C.C. Muli**

J U D G E M E N T

The appellant herein was jointly charged with another under S.278 Penal Code in that on the night of 29th/30th July 1999 at Masokani village, Mumela, Makueni they stole one cow valued Sh.10,000/= the property of Kathyululu Muswii.

The appellant pleaded guilty and he got 5 years imprisonment plus 2 strokes of the cane. His appeal is basically on sentence only – that it was harsh.

The Learned State Counsel was inclined to think so.

The plea of guilty was properly and regularly entered in that the words used by the appellant were fully contained in his plea (see S.207 Criminal Procedure Code). Facts constituted the offence of stock theft and the Learned Trial Magistrate properly convicted the appellant. After mitigation the sentence aforesaid followed. The appellant was a first offender and the cow was recovered. He told the court below that he would not repeat the offence. He has served about one year and four months of the sentence.

It is this court's view that the lower court had the basis to mete out the sentence it did. It was lawful and the Learned Trial Magistrate expressed a view, quite probably from the many cases of this nature going on before him, that stock theft was prevalent.

However from the whole matter, this court is disposed to remark that, the ends of justice shall still be served even if the lower court sentence is reduced. In the result that the lower court sentence is set aside and substituted with one that will result in the appellant's immediate release from prison. The term served should be considered sufficient in the circumstances.

Appeal dismissed. But the appellant to be set at liberty forthwith unless otherwise held. The sentence served is deemed enough.

Judgement accordingly.
Delivered on 19th December 2000.

J. W. MWERA

JUDGE