



REPUBLIC OF KENYA



KENYA LAW
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**Abdulahi v Republic (Criminal Appeal E047 of 2024)
[2025] KEHC 9548 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E047 OF 2024
AN ONGERI, J
JULY 2, 2025**

BETWEEN

ISMAEL BISHAR ABDULAHI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. D. Wangeci (SPM) in Wundanyi
Criminal Case No. E127 of 2024 delivered on 10th December 2024)*

JUDGMENT

1. The Appellant was sentenced to seven (7) years imprisonment for the offence of stealing stock contrary to Section 278 of the [Penal Code](#).
2. The particulars of the charge were that on 9th March 2024 at around 0500 hours at Wananchi Ranch, Mwachabo Location in Mwatate Sub County, the Appellant stole two bulls valued at Kshs. 500,000/= the property of Yussuf Hassan Mohamed.
3. The Appellant was charged with an alternative count of handling stolen goods contrary to Section 322 (1) (2) of the [Penal Code](#) in that on 9th March 2024 at Wananchi Ranch, Mwachabo Location, Mwatate Sub County within Taita Taveta County, the Appellant otherwise than in the course of stealing, dishonestly undertook to dispose of two bulls valued at Kshs. 500,000/= the property of Yussuf Hassan Mohamed having reason to believe them to be stolen property.
4. The prosecution evidence in summary was that on 9th March 2024, the complainant Yussuf Hassan Mohamed (PW1) received a call from his Manager informing him that two of his bulls were missing at Wananchi Ranch.
5. PW1 instructed his servants to mount a search immediately and they reported back to him that the bulls had been spotted heading to Kabanga Area.



6. The complainant said later the Appellant was intercepted with the bulls which were branded “YH” and “HMS” both red in colour.
7. PW2 Osman Ngure who was the complainant’s manager said on 9th March 2024 at 1p.m, the two bulls “YH” and “HMS” were grazing at Borehole Area when they went missing.
8. PW2 reported to the complainant and mounted a search. PW2 took a motorcycle and followed the foot prints heading to Kabanga Area and they managed to intercept the Appellant with the two bulls and they apprehended the Appellant and took him back to Borehole Area with the bulls.
9. The Appellant was arrested and charged. The Appellant was intercepted 50km away from Borehole Area.
10. The Appellant denied the offence and in his defence called one witness (DW2) who said he was with the Appellant at Kabanga Area when Yussuf Hassan (PW1) and Osman Ngure (PW2) forced the Appellant onto a waiting motor cycle.
11. The trial court found that the Appellant was found with the bulls and convicted him with the offence of stealing stock and sentenced him to seven (7) years imprisonment.
12. The Appellant has appealed to this court on the following grounds:-
 - i. That the learned trial Magistrate erred in both law and fact in convicting and sentencing the Appellant on evidence that was entirely hearsay.
 - ii. That the learned Magistrate erred in both law and facts in finding that the prosecution had proved the essential ingredients of the charge against the Appellant to the required standard against the weight of the evidence on record.
 - iii. That the learned Magistrate erred in both law and fact in failing to take into account the Appellant’s defence of alibi corroborated by the evidence of his witness.
 - iv. That the learned Magistrate erred in both law and fact in finding the Appellant guilty of the offence while there was no direct evidence pointing to the Appellant.
 - v. That the sentence meted out against the Appellant is harsh and excessive in the circumstances of the case.
13. The parties filed written submissions as follows;
14. The appellant, Ismael Bishar Abdullahi, submitted that he was convicted with the offence of stealing two bulls valued at KShs. 500,000 and sentenced to seven years in prison.
15. Dissatisfied with the judgment, he has appealed on several grounds, arguing that the prosecution failed to prove its case beyond reasonable doubt, that the trial court ignored his alibi defense, and that the sentence was excessive.
16. The appellant contends that the prosecution’s case relied entirely on hearsay, as none of the witnesses saw him steal the bulls.
17. That the charge sheet indicated the offence occurred at 5:00 AM, while witness testimonies suggested it happened around 1:00 PM, creating a critical inconsistency that undermines the prosecution’s credibility.
18. The trial court itself acknowledged that no witness saw the appellant steal the bulls, nor were the animals recovered from him, yet still convicted him—a contradiction that raises reasonable doubt.



19. Additionally, the appellant raised an alibi defense, supported by a witness (DW-2), stating he was at Kabanga Centre at the material time.
20. That the prosecution did not disprove this alibi, and the trial court failed to properly evaluate it.
21. That case law establishes that an alibi need only introduce reasonable doubt, and the burden remains on the prosecution to disprove it.
22. Further, that the trial court's failure to consider this defense was a material error.
23. Regarding sentencing, while the maximum penalty for stock theft is 14 years, the appellant, a first offender, was given a harsh seven-year term.
24. That sentencing guidelines recommend leniency for first-time offenders, including non-custodial sentences.
25. The appellant urged the court to reduce the sentence if the conviction is upheld.
26. In conclusion, the appellant submitted that the conviction was unsafe due to insufficient evidence, inconsistencies in the prosecution's case, and the unrefuted alibi defense.
27. Further, that the sentence was also excessive.
28. The appellant prays for the appeal to be allowed, the conviction quashed, and the sentence set aside, or alternatively, for a reduced sentence.
29. He reminded the court that it is better to acquit a guilty person than convict an innocent one, emphasizing the high standard of proof beyond reasonable doubt in criminal cases.
30. The respondent did not file any submissions in this case.
31. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced at the trial court and to come up with its own conclusion whether or not to support the trial court's findings.
32. This principle was affirmed in the case of *Okeno v Republic* [1972] EA 32, where the Court of Appeal held that a first appellate court must subject the entire evidence to a fresh and exhaustive examination and make its own findings on the evidence while giving due allowance for the fact that it did not observe the witnesses' demeanor.
33. The issues for determination in this appeal are as follows;
 - i. Whether the prosecution proved the guilt of the Appellant to the required standard.
 - ii. Whether the sentence meted on the Appellant is excessive.
34. I have carefully re-evaluated the evidence adduced before the trial court and considered the submissions by the Appellant and I find that the prosecution's case was riddled with inconsistencies and hearsay, which rendered it insufficient to meet the standard of proof beyond reasonable doubt as required under Section 107(1) of the *Evidence Act*.
35. The charge sheet indicated the offence occurred at 5:00 AM, yet the witnesses (PW1 and PW2) testified that the bulls were discovered missing at 1:00 PM. This material contradiction goes to the root of the prosecution's case and creates reasonable doubt as to the Appellant's involvement in the theft.
36. As held in *Sawe v Republic* [2003] eKLR, the prosecution must prove its case with consistent and credible evidence.



37. The trial court itself acknowledged that no witness saw the Appellant steal the bulls, nor were the animals recovered directly from him.
38. This admission alone should have been sufficient to acquit the Appellant, as circumstantial evidence must be irresistible and incapable of any other explanation (see *R v Kipkering Arap Koske & Another* (1949) 16 EACA 135).
39. The Appellant raised an alibi defence, corroborated by his witness (DW2), stating that he was at Kabanga Centre at the material time.
40. The burden was on the prosecution to disprove this alibi, as established in *Victor Mwendwa Mulinge v Republic* [2014] eKLR, where the Court of Appeal held that an alibi need only create reasonable doubt.
41. The prosecution led no evidence to place the Appellant at the scene at the time of the alleged theft, and the trial court erred in dismissing this defence without proper evaluation.
42. Even if the conviction were to be upheld (which it is not), the seven-year sentence was manifestly harsh for a first-time offender.
43. The Sentencing Policy Guidelines (2016) emphasize rehabilitation for first offenders, and courts should consider non-custodial sentences where appropriate.
44. In *Shadrack Kipkoech v Republic* [2013] eKLR, the Court of Appeal reduced a similar sentence, holding that excessive punishment without proper justification violates constitutional principles of fairness.
45. The conviction is unsafe due to inconsistencies, hearsay evidence, and failure to disprove the Appellant's alibi.
46. The sentence was excessive and not in line with sentencing guidelines.
47. Consequently, the appeal is allowed. The conviction is quashed, and the sentence set aside.
48. The Appellant shall be released forthwith unless otherwise lawfully held for any other reason.

DATED, SIGNED AND DELIVERED THIS 2ND DAY OF JULY 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

Prosecutor: Ms. Kanyuira

Appellant

