



REPUBLIC OF KENYA



KENYA LAW
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**Mwanyasi v Republic (Criminal Appeal E013 of 2024)
[2025] KEHC 9545 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9545 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E013 OF 2024
AN ONGERI, J
JULY 2, 2025**

BETWEEN

ONESMUS MWANDOE MWANYASI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. D. Wangeci (SPM) in
Wundanyi CR Case No. E456 of 2022 delivered on 6th December 2023)*

JUDGMENT

1. The Appellant in this case Onesmus Mwandoe Mwanyasi was sentenced to four (4) 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 the night of 8th December 2022 at an unknown hour within Ikuminyi village, Mwanda Location within Taita Taveta County, the Appellant stole 18 goats and 6 sheep all valued at Kshs. 120,000/= the property of Grevance Mwamrizi.
3. The Appellant was charged with an alternative count of handling stolen goods contrary to Section 322(2) of the [Penal Code](#) in that on 10th December 2022 at 3p.m at Ndomokunyi village, Mwanda Location, Wundanyi Sub County, the Appellant other than in the course of stealing, dishonestly undertook the retention of two sheep valued at Kshs. 8,000/= the property of Grevance Mwamrizi for the benefit of himself having reason to believe them to be stolen property.
4. The Appellant pleaded not guilty to the charges and the prosecution called a total of five (5) witnesses.
5. The prosecution evidence in summary was that the complainant (PW1) Grevance Mwamrizi locked in his livestock on 8th December 2022 at 6p.m. The following day at 6a.m he noticed that the structure housing his livestock was damaged.



6. PW1 discovered 18 goats and 6 sheep were missing after he did a head count.
7. On 10th December 2022 PW1 received a call from the village elder that some goats had been spotted being transported on a motor cycle.
8. The complainant related the information to his wife (PW2) Floodness Mkambura and his brother, Mwamwari who rushed to the area and identified one sheep and kid as belonging to the stolen livestock.
9. They went to Mwaktau upon being told some goats had been transported there and found three goats tethered in a field. They laid ambush and informed police and PW3 Dalmas Moka was arrested.
10. PW3 Dalmas Moka said he bought the goats from the Appellant on 8th December 2022 and paid Kshs. 7,500/= via mobile money and Kshs. 1,000/= in cash. PW3 produced his bank account statement.
11. The Appellant's defence was a mere denial.
12. The trial court found that the complainant said he lost 18 goats and 6 sheep.
13. That two goats, two sheep and a kid were recovered and PW3 said he bought 2 goats and a sheep from the Appellant while he sleep and a kid were recovered from the Appellant.
14. The trial court convicted the Appellant with the offence of stock theft and sentenced him to four (4) years imprisonment.
15. The Appellant appealed to this court on the following grounds:-
 - i. That the Appellant pleaded not guilty to the offence.
 - ii. That the trial Magistrate erred in both law and facts in failing to notice that the vital witnesses were never summoned to clear the doubts in this matter by the prosecution.
 - iii. That the trial Magistrate erred in both law and facts by convicting the Appellant without noticing that this case was marred with a lot of contradictions and inconsistencies.
 - iv. That the trial court further erred in law and facts by convicting the Appellant in failing to notice that the investigation in this instant matter was shoddily done by the responsible officers.
 - v. That the trial court further erred in law and facts by dismissing the Appellant's alibi-defence without bearing in mind that the Appellant himself had earlier raised his issue with the complainant (grudge on land dispute) even though the complainant endeavoured to deny but this was an issue which the trial court was supposed to remember before passing his verdict.
 - vi. That the honourable court finds that the time the Appellant has served in prison the Appellant has served as sufficient retribution for the offence committed and the Appellant also learnt that lesson through perseverance of which the Appellant humbly request the honourable court to allow the Appellant return back to his family and more so to the society as a reformed citizen who can no longer ditch himself (indulge) in any criminal activities.
 - vii. That further grounds shall be adduced at the hearing of this appeal.
 - viii. That the Appellant wish to be present during the hearing and determination of this appeal.
 - ix. That the Appellant pray to be supplied with the record of trial proceedings and the judgment to enable the Appellant prepare for the hearing of his appeal.
16. The parties filed written submissions as follows;



17. The appellant in his submissions challenged his conviction and four-year prison sentence, arguing that the prosecution failed to prove its case beyond reasonable doubt.
18. He maintained his innocence, asserting that he never pleaded guilty and that crucial witnesses were not summoned, weakening the prosecution's case.
19. The appellant highlighted inconsistencies in witness testimonies regarding the recovery of stolen livestock, noting that no one saw him stealing the animals.
20. He pointed out that the key witness, Dalmas (PW3), who allegedly bought the stolen livestock, was himself implicated in the theft since he offered to compensate the complainant—an admission the appellant argues proves PW3's guilt.
21. The appellant further contended that the trial court ignored gaps in the prosecution's case, including the absence of testimony from Robert, in whose homestead some livestock were found.
22. He argued that the circumstantial evidence relied upon was weak, as no direct proof linked him to the theft.
23. Additionally, he questions the credibility of the investigation, noting that the arresting officer admitted to not visiting the recovery scenes and relied solely on witness statements.
24. The appellant also disputed the alleged mobile money transfer, citing conflicting dates in PW3's testimony, which he claims undermines the prosecution's narrative.
25. He asserted that his alibi defense was wrongly dismissed, violating his constitutional rights, and argues that the conviction was influenced by an ongoing land dispute with the complainant rather than concrete evidence.
26. The appellant requested that his conviction be overturned, his sentence set aside, and that he be released, citing the time already served as sufficient.
27. He relied on legal precedents emphasizing the prosecution's burden of proof and the presumption of innocence, maintaining that the trial court's errors justify appellate intervention.
28. The respondent did not file any submissions herein.
29. 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.
30. 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.
31. The issues for determination in this appeal are as follows:-
 - i. Whether the prosecution proved the guilt of the Appellant.
 - ii. Whether the sentence meted is excessive.
 - iii. Whether the appeal should be allowed.
32. I have re-evaluate the evidence adduced before the trial court. It is the duty of the prosecution to prove the Appellant's guilt beyond reasonable doubt, as established under Article 50(2)(a) of *the Constitution* of Kenya and reiterated in *Woolmington v DPP* [1935] AC 462.



33. The charge of stealing stock contrary to Section 278 of the *Penal Code* required proof that the Appellant dishonestly took the livestock belonging to the complainant without his consent.
34. The alternative charge of handling stolen property under Section 322(2) of the *Penal Code* required proof that the Appellant, knowing or having reason to believe the property was stolen, dishonestly retained it.
35. The evidence presented by the prosecution was largely circumstantial.
36. The complainant (PW1) testified that his livestock were stolen on the night of 8th December 2022, and some were later recovered from PW3, Dalmas Moka, who claimed to have purchased them from the Appellant.
37. The prosecution relied on this transaction to link the Appellant to the theft.
38. However, as held in *Karanja & Another v Republic* [2004] 2 KLR 140, circumstantial evidence must be so strong that it irresistibly points to the guilt of the accused and excludes any other reasonable hypothesis.
39. In this case, there was no direct evidence placing the Appellant at the scene of the theft, nor was there proof that he was in possession of all the stolen livestock.
40. The recovery of only a few animals from PW3, who had a plausible explanation for his possession (having allegedly purchased them), weakens the prosecution's case.
41. Moreover, the prosecution failed to call crucial witnesses, such as Robert, in whose homestead some livestock were allegedly found.
42. This omission creates a gap in the chain of evidence, as highlighted in *Bukenya & Others v Uganda* [1972] EA 549, where it was held that the prosecution must call all necessary witnesses to establish the truth, failing which the court may infer that their testimony would have been adverse.
43. The investigating officer's admission that he did not visit the recovery scenes further undermines the thoroughness of the investigation, as noted in *Sawe v Republic* [2003] KLR 364, where the court emphasized that shoddy investigations weaken the prosecution's case.
44. The Appellant raised an alibi defense, claiming he was not involved in the theft.
45. While the burden of disproving an alibi lies with the prosecution (*Republic v Victor Mwendwa Mulinge* [2014] eKLR), the trial court dismissed this defense without proper consideration.
46. The Appellant also alleged a grudge with the complainant over a land dispute, which, could have provided a motive for false accusations.
47. The trial court's failure to address this issue was a misdirection, as held in *Munyao v Republic* [2018] eKLR, where the court emphasized that any potential bias or motive to fabricate evidence must be carefully evaluated.
48. Regarding sentencing, the Appellant was sentenced to four years' imprisonment, which he contends is excessive.
49. Under Section 278 of the *Penal Code*, stock theft carries a maximum sentence of 14 years.
50. While sentencing is discretionary, the court in *Shadrack Kipkoech Kogo v Republic* [2003] eKLR emphasized that sentences must be proportionate to the offense and consider mitigating factors.



51. The Appellant has already served part of his sentence, and in light of the weak evidence linking him to the offense, a lesser sentence or non-custodial option would have been more appropriate.
52. In conclusion, the prosecution failed to prove the Appellant's guilt beyond reasonable doubt.
53. The evidence was circumstantial, key witnesses were not called, and the investigation was inadequate.
54. The trial court erred in convicting the Appellant without addressing these gaps.
55. Consequently, the appeal is allowed, the conviction is quashed, and the sentence is set aside.
56. 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

