



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ouma v Republic (Criminal Appeal E017 of 2024)  
[2024] KEHC 11710 (KLR) (1 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11710 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E017 OF 2024  
KW KIARIE, J  
OCTOBER 1, 2024**

**BETWEEN**

**FELIX OMONDI OUMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No. E404 of 2022 of the Chief Magistrate's Court at Homa Bay by Hon. J.M Nang'ea– Chief Magistrate)*

**JUDGMENT**

1. Felix Omondi Ouma, the appellant herein, was convicted of stealing stock contrary to section 278 of the Penal Code.
2. The particulars of the offence were that on the 25<sup>th</sup> day of October 2022, in Orege village, Genga sublocation in Rangwe Sub County of Homa Bay County, jointly with another stole a brown cow, valued at Kshs.12,000/= the property of Richard Okello.
3. The appellant was sentenced to serve eighteen months imprisonment. He has appealed against the sentence.
4. The appellant was in person. He contended that the trial magistrate did not include the period I was in remand custody from 1<sup>st</sup> October 2023 to 11<sup>th</sup> October 2024 as part of the served portion of the sentence under article 333(2) of the CPC.
5. The state opposed the appeal for lack of merits.
6. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence before the lower court afresh and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs. Republic* [1972] EA 32.



7. Section 333(2) of the *Penal Code* provides:

Subject to the provisions of section 38 of the *Penal Code* (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

8. The appellant was arrested on September 31, 2022, and remained in custody until the case was concluded. His sentence ought to run from that date. His appeal is, therefore, allowed.

**DELIVERED AND SIGNED AT HOMA BAY THIS 1<sup>ST</sup> DAY OF OCTOBER 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

