



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 210 OF 2014**

**(FORMERLY NYERI HCCRA 157 OF 2012)**

**JOHN MUTONYA NDIRANGU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Appeal against Conviction and Sentence in Kigumo SRM Criminal Case No 339 of 2012 – B. Khaemba, RM)**

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

1. The Appellant in this appeal, **John Mutonya Ndirangu**, and his co-accused, one **John Mwangi Mugwe**, were charged in the main count with **stealing stock** contrary to **section 278** of the **Penal Code**. In the alternative they were charged with **handling stolen goods** contrary to **section 322(2)** of the Penal Code. After trial they were acquitted of the main charge but convicted of the alternative charge. They were each sentenced to seven (7) years imprisonment.
2. The Appellant herein has appealed against both conviction and sentence. Our appeals registry checked to see if his co-convict, **John Mwangi Mugwe**, also appealed. He did not appeal, not in this court anyway. Learned Prosecution Counsel does not support the Appellant's conviction.
3. I have read through the record of the trial court in order to evaluate myself the evidence placed before the court and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however that I neither heard nor saw the witnesses testify, and I have given due allowance for that fact.
4. The evidence placed before the trial court was that the Appellant and his co-accused were found in possession of the complainant's (PW1's) bull. PW2 however testified that the Appellant had "confirmed" to him that the bull belonged to his co-accused. The Appellant himself testified under oath in his own defence that he was merely assisting his co-accused, for a fee, to drive the animal to some place. He testified further that he did not know that the animal was stolen. His testimony was not shaken at all in cross-examination by the prosecutor or the co-accused.
5. There was thus no evidence of knowledge on the part of the Appellant that the animal had been stolen, or evidence of any reason for him to believe that it was stolen or otherwise unlawfully obtained.
6. I am therefore not satisfied that the alternative charge was proved against the Appellant beyond reasonable doubt, and learned Prosecution Counsel properly conceded the appeal. I will in the event allow his appeal in its entirety. The conviction entered against him is hereby quashed and his sentence set aside. He shall be set at liberty unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 8<sup>TH</sup> DAY OF MARCH 2016**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 11<sup>TH</sup> DAY OF MARCH 2016**