



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL APPEAL NO 137 OF 2011**

**ALIMA KALIAMOI.....APPELLANT**

**VS**

**REPUBLIC.....RESPONDENT**

**(APPEAL FROM THE JUDGMENT OF THE PRINCIPAL MAGISTRATE, KAPENGURIA  
DATED 16<sup>TH</sup> MAY 2011 IN CRIMINAL CASE NO 119 OF 2010)**

**JUDGMENT**

**Introduction**

The Appellant, ALIMA KALIAMOI was charged with stealing stock contrary to Section 278 of the Penal Code, the particulars of the charge being that during the night of 29<sup>th</sup>/30<sup>th</sup> January 2010 at Kapenguria Location in West Pokot District within the Rift Valley Province, jointly with another not before court, the Appellant stole one bull valued at Kshs. 15,000 the property of Roda Kisa. The Appellant faced an alternative charge of handling stolen property contrary to Section 322(2) of the Penal Code.

In addition, the Appellant faced a second count of escape from lawful custody contrary to Section 123 of the Penal Code. The particulars of this charge were that on the 5<sup>th</sup> Day of April 2000 at Kapenguria GK Prison in West Pokot District within the Rift Valley Province, the Appellant being a convict in lawful custody in Kapenguria GK Prison undergoing a sentence of seven years for the offence of stealing stock vide CR 840/63/2000, CF 129/2000 escaped from such lawful custody.

On count I the facts of the case as recorded by the trial court were that on 2<sup>nd</sup> February 2010 the Appellant was found in possession of the Complainant's bull which had gone missing on the night of 29<sup>th</sup>/30<sup>th</sup> January 2010.

With regard to count II, the facts were that on 5<sup>th</sup> April 2000, the Appellant while serving a seven (7) year prison sentence at Kapenguria GK Prison for the offence of stealing stock in Kapenguria PMC Criminal Case No 129 of 2000 escaped alongside other prisoners.

The Appellant was tried and at the Principal Magistrate's Court at Kapenguria and acquitted on Count I under Section 215 of the Criminal Procedure Code. He was however convicted on Count II and sentenced to thirty two (32) months' imprisonment. He was acquitted on the alternative charge.

**The Appellant's Appeal**

Being aggrieved by both conviction and sentence, the Appellant filed a Petition and Grounds of Appeal

on 19<sup>th</sup> October 2011. The gist of the Appellant's Grounds of Appeal was that he was not properly identified and his defence was not considered.

The Appeal was heard on 16<sup>th</sup> October 2013 with the Appellant appearing in person and Mr. Konga appearing for the State. The Appellant relied on his written submissions.

**Opposition by the State**

In opposing the Appeal, Mr. Konga learned State Counsel submitted that the Appellant was properly convicted on count II since PW 2, a Prison Warder at Kapenguria GK Prison produced a signal and prison records to prove that the Appellant had indeed escaped from lawful custody.

**Finding and Determination**

The Appellant's appeal is based on his averment that he was not properly identified at the scene of crime. He however did not deny the fact that he was in lawful custody at the time he was said to have escaped. He also did not dislodge the documentary evidence produced by the Prosecution being; a signal and prison records to prove that he had indeed escaped from lawful custody. I therefore find that the Prosecution proved its case beyond reasonable doubt.

I also find the sentence imposed upon the Appellant reasonable in the circumstances. Consequently, I find no reason to interfere with the judgment of the trial court which is hereby confirmed. Accordingly, this appeal fails and is hereby dismissed in its entirety.

**DATED AND SIGNED AT NAIROBI THIS 1<sup>ST</sup> DAY OF NOVEMBER 2013**

**LINNET NDOLO**

**JUDGE**

**DELIVERED IN OPEN COURT AT KITALE THIS 6<sup>TH</sup> DAY OF NOVEMBER 2013**

**J.R KARANJA**

**JUDGE**

**In the Presence of:**

.....Appellant

.....Respondent