



## **Soi v Republic Court of Appeal, at Kisumu June 21, 1985**

Nyarangi JA, Platt & Gachuhi Ag JJA

Criminal Appeal No 33 of 1985

(Appeal from the High Court at Kisumu, Schofield J)

**June 21, 1985, Nyarangi JA, Platt & Gachuhi Ag JJA delivered the following**

### **Judgment.**

The appellant and another were convicted of stealing stock contrary to section 278 of the Penal Code and each was sentenced to 7 years' imprisonment and one stroke corporal punishment. He appealed to the High Court (Schofield J) contending that he did not have anything to do with the stolen cattle and that he was mistaken for a thief because he and the other together walked to the market place where the other was supposed to have sold the material stock. The appeal was unsuccessful. His grounds of his second appeal are that the complainant failed to identify him, that he had no connection with the other who was found in possession of the stolen bulls, that the co-accused did not mention him in court and that the co-accused voluntarily admitted the offence. In a brief address to the court, the appellant complained that he was convicted although the other accused admitted stealing and did not mention him.

Mr Bwonwonga, senior state counsel, supported the conviction and submitted that the trial and the High Court considered and rejected the appellant's assertion of innocence. The trial and first appellate court found, on the soundest of evidence, that the appellant was found in possession of the complainant's stolen stock close to a slaughter house on March 12, 1984, some five days after the bulls were stolen. The appellant attempted to run away on seeing Midogo (PW 3) a son of the complainant and Police Constable Francis (PW 4). That was recent possession with a mischievous purpose. The appellant's unsworn explanation of the recent possession was that he saw one Langat selling a bull to the co-accused, that the three of them went to Kericho town and that there at a river they met policemen who arrested them. That is not acceptable explanation, in view of the evidence of Midogo and Francis. The concurrent finding by the two courts that the appellant had stolen the bulls is clearly correct: R v Hassan (19430 EACA 121).

There is no issue of law raised by the appeal to warrant interference with the conviction. The appeal is dismissed. That is the order of the court.