



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(Coram: Madan and Potter JJA and Chesoni Ag JA)
CRIMINAL APPEAL NO 18 OF 1983

BETWEEN

KIMUTAI ARAP NGETICH APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nakuru (Masime J) dated 22nd October, 1981

in

Criminal Appeal No 435 of 1981)

JUDGMENT OF THE COURT

MADAN J A

The appellant Kimutai Arap Ngetich was convicted of stealing stock, contrary to section 278 of the Penal Code (cap 63). This is a second appeal, the first appeal to the High Court having been summarily rejected under section 352(2) of the Criminal Procedure Code (cap 75).

On the night of February 9/10, 1981 13 head of cattle were stolen from Chamaner Farm.

They were the property of Mr Simion Kiptigich Chebutuk.

The appellant had gone to live at Chebungei with 3 head of cattle on a three-acre parcel, which he bought from Kipketach arap Kitur. On February 11, 1981 he brought to his farm ten head of cattle. He slaughtered one head and sold the meat to neighbours. Mr Kitur made a report to the police at Bomet. The police arrived at the appellant's farm with Mr Chebut on February 13 where they recovered nine head of cattle and one skin, which was buried in the ground. **Mr Chebutuk identified as his cattle which had been stolen** from his farm, also the skin of one of them. **The appellant had disappeared from his farm arrested on June 22, 1981.**

If the appellant had been present at the farm then we would have unhesitatingly said that he was caught red-handed in possession of the stolen cattle.

The appellant made an unsworn statement in his defence, which was totally unworthy of belief. The trial magistrate ejected it.

There is no merit in this appeal. It is ordered to be dismissed.

Dated at Nakuru this 21st day of March, 1983.

C B MADAN

JUDGE OF APPEAL

K D POTTER

JUDGE OF APPEAL

Z R CHESONI

AG JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR