

REPUBLIC OF KENYA
IN THE PRINCIPAL
MAGISTRATE’S COURT AT
CRIMINAL CASE. NO. E205 OF



LAMU
2025.

REPUBLIC.....PROSECUTOR

-VERSUS-

MOHAMED GUYO.....ACCUSED PERSON

JUDGMENT.

A. BRIEF FACTS.

- 1) On the 3rd day of September 2025 at around 0300hours at Pambaroho of Lamu county, the accused stole a cow belonging to the Abdi Waticho Dhadho valued at Kshs.90,000/=. He is also charged with resisting arrest and that on 5/10/2025 at Mkomani in Lamu county the accused resisted the arrest by No. 117092 PC Kelvin Mwangi and PC Iftin Abdile by uttering “siendi mahali popote” and refused to be handcuffed in due execution of their lawful duties.
- 2) 4 prosecution witnesses were called by the state to prove the case against the accused. At the close of the prosecution’s case, the accused was found to have a case to answer and upon being placed on his defence called 2 witnesses and closed his case.

The Prosecution’s case.

- 3) It is the prosecution’s case through the evidence of Pw 1 Abdi Waticho Dhadho that on 3/9/2025 he went to look for his cattle in Matondoni and on his way he was told that the accused had been seen with his animal and on his way back he met the accused and who tried to hide in the bush as he headed to his house. Upon arrival he went to his grandmother and informed her and one Fumo what the accused had done and the 2 confirmed that he had taken the cow that was in calf.

He then went and reported the matter to the police. He agreed that he never saw the accused take away any cattle.

- 4) Pw 2 Abdalla Abdulrazak stated that on the said material day while heading to open the mosque saw the accused carrying a cow and he asked him where he was taking the cow but no response from him. He was able to identify him by use of the security light. He clarified that he was actually pulling the cow.
- 5) He then screamed and the accused went into hiding into the bush but he did not follow him and he informed Waticho and who went and reported the matter to the police.
- 6) Pw 3 PC Kevin Mwangi stated on 5/10/2025 at around 11am while at AIC Church while offering security services with Pw4, Pw 4 spotted the accused who was supposed to be arrested for this offence and called upon him to arrest the accused herein and when they approached the accused and informed he was under arrest and that the accused indicated that he will not go anywhere and they had to use reasonable force to handcuff him. Upon being cross examined, Pw 3 admitted that at the time of the arrest he was carrying charcoal.
- 7) Pw 4 corroborated the evidence of Pw3 as they were both arresting officers.

Defence case.

- 8) Mohamed Guyo while denying the charges stated that its been like 10 years since he stepped into the compound of the complainant and vice versa and as such it is not true that he took the cow since he has never been found with it and that he does not have the strength to even pull the said cow.
- 9) On the second count, it was his defence that on the material day of the arrest Pw 4 found him carrying a sack of charcoal and that he did not resist arrest.
- 10) Dw2 Mohamed Boru a resident of Zambarauni and that he knows the accused so well having been friends and neighbours for long and that on the material day the accused went to his house at 3am and told him that the complainant went to his house with other people and he could not open the house for them because he was not sure of their intention. They left and went back to the accused's house and they did

not find anyone and he advised the accused to report the matter to the authorities.

B. ISSUE FOR DETERMINATION.

- 11) There are 2 issues for determination is whether the accused persons stole the complainant's cow and whether he resisted arrest of police officers.

C. ANALYSIS AND DETERMINATION.

- 12) Stock theft is all about stealing stock, domestic animals or livestock basically. The animals capable of being stolen, for the purposes of section 278 of the Penal Code, are a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig.
- 13) In this case the charge sheet indicates that a cow worth Kshs.90,000/= was stolen. Among the animals mentioned under section 278 a cow is among those listed therefore properly fit under the animals mentioned in section 278 of the Penal code.
- 14) The critical elements of the offence would be **ownership**, the **taking of the animal**, **possession** and **conversion of the thing stolen**. These were ably enunciated in the case of **David Shapaya v Republic [2022] eKLR**.
- 15) On the first element of ownership, there is no contention that Pw 1 owned the cow to the extent that no other person including the accused has claimed ownership of the said cow.
- 16) On the second element that is of taking of possession of the cow. No other person other than the Pw 2 allegedly saw the accused take possession of the animal by pulling it through a bush. Pw 2 was categorical that he saw the accused pull the animal as he headed to the mosque to open it for prayers I believe. It was his testimony that he was able to identify the accused by use of a security light.
- 17) He does not state where the security light was from considering that soon after seeing him he allegedly dashed into the bush. There was need to clearly demonstrate to court the source of the light and how bright it was for this court to be satisfied that the accused was properly identified.

18) The law on identification especially where it takes place in difficult circumstances such as what happened herein is that it should be treated with a lot of care so as to avoid convicting the accused person on evidence of mistaken identity. As already observed evidence was led as to the status of lighting but it was not detailed other than stating that the same was from a security light.

19) In **Francis Karuiki and 7 others vs. Republic Cr. Appeal No 6 of 2001 [200] eKLR** cited with approval in the case of **LSA v Republic (Criminal Appeal E035 of 2024) [2025] KEHC 6356 (KLR) (14 May 2025) (Judgment)** (Justice JN Njagi sitting at Garsen) it was held that;

“The law on identification is well settled and this court has from time to time said that the evidence relating to identification must be scrutinized carefully and should only be accepted and acted upon if satisfied that the identification is positive and free from possibility of error.”

20) In **Wamunga v Republic [1989] KLR 424 at 426** the Court of Appeal had this to say on the subject:

“Where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favorable and free from the possibility of error before it can safely make it the basis of a conviction.”

21) Finally in **Kimea v Republic (Criminal Appeal 010 of 2020) [2022] KEHC 104 (KLR) (18 February 2022)(Judgment)** the court enumerated the factors to be considered in identification to include such factors as the **lighting conditions** under which the witness made his/her observation; the **distance between the witness**; the **period of time the witness actually observed the perpetrator** and **whether the witness had an unobstructed view of the perpetrator.**

22) From the above decisions it is crucial for the court to satisfy itself that the identification from this single witness should be free from any error. It is not clear how far Pw 2 was from the accused, the period of time Pw 2 actually observed the accused but it suggests it was a brief moment going by his evidence to the extent that when he saw him he screamed and the accused dashed into the bush. It is not clear which position he was looking at the accused from. Lastly it is not clear

whether Pw 2 had an unobstructed view of the accused but all indications at least from the evidence of Pw 2 are that he had an obstructed view of the accused since as soon as he screamed the accused allegedly went into hiding and he did not follow him.

- 23) In the circumstances aforementioned I am not satisfied that the circumstances of identification were favorable and free from the possibility of error and I do not find it safe to use it as a basis of conviction.
- 24) Having so found, it is not clear in my mind that it is the accused who took possession of the cow in question and the charge therefore fails on that basis.
- 25) On the second count of resisting arrest, it was the evidence of Pw3 and 4 that when they spotted the accused and went to arrest him, he resisted by stating that he was not going anywhere and they had to use reasonable force to handcuff him. Other than stating this the 2 witnesses do not state what else the accused did to make it difficult to arrest him. On his part the accused in his defence stated that at the time of his arrest he was carrying a sack of charcoal a fact admitted by Pw 3 when cross examined. Pw 4 on the other hand on being cross examined he stated that the accused did not have anything in his hands.
- 26) It is not normal that Pw 3 and 4 were all arresting person and jointly arrested the accused person and saw different things. This is a contradiction that ought to have been explained in reexamination but he was not reexamined.
- 27) Consequently, I do find this a grave contradiction and which creates a doubt as to what exactly happened during the arrest and as such there is doubt as to whether or not the accused resisted arrest. That doubt is definitely resolved in favour of the accused person. Count 2 is equally not proved.

D. CONCLUSION AND DISPOSITION.

- 28) Consequently, the accused person is found not guilty is accordingly acquitted for the offences of stealing stock contrary to section 278 of the penal code and resisting arrest of police officers contrary to section 103(a) of the National Police Service Act under Section 215 of the Criminal Procedure Code.

29) Right of appeal 14 days

30) Orders accordingly.

**DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS..26TH ...
DAY OF ...February...2026**

**F.M. MULAMA
RESIDENT MAGISTRATE**

In the presence of:

Peter Birir for DPP.

Court Assistant:- Daniel Damise.

Mohamed Guyo