



REPUBLIC OF KENYA



**Mbuthia v Republic (Criminal Appeal E006 of 2023)
[2025] KEHC 1333 (KLR) (Crim) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1333 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL E006 OF 2023
KW KIARIE, J
FEBRUARY 27, 2025**

BETWEEN

DAVID MWANGI MBUTHIA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E346 of 2023 of the Senior Principal Magistrate's Court at Ol Kalou by Hon. R. Yator – Senior Principal Magistrate)

JUDGMENT

1. David Mwangi Mbuthia, the appellant, was convicted of injuring animals in violation of section 338 of the [Penal Code](#).
2. The particulars of the offence were that on the 10th day of May 2023, at Kwa Wanjiku village, Mirangine Sub County within Nyandarua County, willfully and unlawfully maimed one Ayrshire cow valued at Kshs. 100,000/= the property of David Kiarie Mbuthia.
3. He was sentenced to serve five years imprisonment. He was aggrieved and appealed against both the conviction and sentence. He was in person and raised the following grounds:
 - a. a) That the learned magistrate erred both in law and in fact by relying on contradictory evidence.
 - b. b) The learned magistrate erred both in law and, in fact, by failing to consider that the complainant did not identify the breed of the alleged injured cow.
 - c. c) That he was denied his right to a proper hearing during the sentencing.



3. The state opposed the sentence through Ms. Vena Odero, learned counsel for the prosecution. She argued that the minor contradiction did not undermine the credibility of the prosecution's case.
4. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence before the lower court afresh and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.
5. The appellant contended that Elizabeth Kiarie (PW2) described the alleged injured cow as white and brown, while the veterinary officer said it was a red and white cow. A photograph of the maimed cow was produced, and it fits the description by PW2. The veterinary officer's misdescription is a minor discrepancy that does not dent the credibility of his evidence.
6. David Kiarie (PW1) said his maimed cow was an Ayrshire, while the veterinary officer described it as a cross. Possibly, this is why he contended that the complainant failed to identify the breed of the alleged injured cow. The breed was an issue during the trial. What was in contention was whether the cow was injured and who did it.
7. The evidence of Elizabeth Kiarie (PW2) is that she saw the appellant cutting the cow. She went and reported to the complainant, who, on going to check, saw the appellant leaving the scene hurriedly while armed with a machete.
8. The appellant contended that the allegation against him was false in the trial court.
9. After analysing the evidence on record, I find that the prosecution proved their case to the required standards.
10. Section 338 of the *Penal Code* provides as follows:

Any person who wilfully and unlawfully kills, maims or wounds any animal capable of being stolen is guilty of a felony and is liable, if the animal is an animal such as is referred to in section 278, to imprisonment for fourteen years, and, in any other case, to imprisonment for three years.

Section 278 of the *Penal Code* states:

If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.

3. The animals the appellant maimed fall within the category of animals referred to under section 278 of the *Penal Code*.
4. Before the sentencing, the appellant was given a chance to mitigate. All he told the court was that he did not commit the offence. He cannot be heard to claim that he was denied his right during the sentencing.
5. The learned trial magistrate's sentence cannot be described as harsh or excessive. I am not persuaded to interfere with it.
6. The upshot of the foregoing is that the appeal is accordingly dismissed.

DELIVERED AND SIGNED AT NYANDARUA THIS 27TH DAY OF FEBRUARY 2025

KIARIE WAWERU KIARIE

JUDGE

