



REPUBLIC OF KENYA



**KENYA LAW**  
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**Siloi v Republic (Criminal Appeal E005 of 2024)  
[2025] KEHC 1222 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1222 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL APPEAL E005 OF 2024  
RB NGETICH, J  
FEBRUARY 27, 2025**

**BETWEEN**

**TOM KIPROP SILOI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(This appeal emanates from the decision of Hon. Alice Towett - Senior Resident Magistrate  
in the Magistrate's Court at Eldama Ravine in Criminal Case No. E405 of 2022)*

**JUDGMENT**

1. The Appellant was charged with 2 counts of offences of stealing stock contrary to Section 278 of the [Penal Code](#).  
Particulars to Count 1 are that on the 9<sup>th</sup> day of April, 2021 at Sagal Village in Mogotio Sub-County within Baringo County, the accused stole one (1) bull valued at Kshs.80,000/= the property of Alex Siloi. Particulars to Count 2 are that on the 9<sup>th</sup> day of April, 2021 at Sagal village in Mogotio Sub-County within Baringo County stole one (1) bull valued at Kshs.100,000/= the property of Tapkil Teriki Siloi.
2. The Appellant denied both counts and the prosecution called 5 witnesses in support of the charges preferred against the accused. Upon concluding trial, the trial court delivered judgment on the 23<sup>rd</sup> November, 2023 finding accused guilty as charged on both counts and sentenced the Appellant to serve 18 months imprisonment for each counts; sentences were to run consecutively.
3. The Appellant being aggrieved and dissatisfied by the said decision appeals against the judgment on both conviction and sentence on the following grounds: -
  - i. That the Learned trial magistrate erred in law by convicting the appellant on the basis of insufficient and precarious evidence.



- ii. The Learned Trial magistrate never ascertained the owner of the cow because the Appellant prayed the court to visit the scene of crime and they never did neither the investigating officer. That they never even bothered to call a neighbor or village elder to ascertain the same.
  - iii. That the Learned trial magistrate erred in law by not giving the appellant an option of fine and yet the court was not certain of the offences. The appellant states that he is married and blessed with six school going children 2 in University and 3 in Secondary school. That he takes care of 5 orphans and he is the remaining son in a family of four, two sisters and one deceased brother and the wife.
  - iv. That he prays this Honourable court terminates this matter since what they are fighting over is Land LR. Lembus Kiptuim belonging to his late father Siloin Kimuge which changed hands in 1974 when his father was killed by his mother in April and by August, 1974 she had a title deed in her name on questionable grounds. That the land was subdivided into five portions in 2022 while he was in remand for the case of threatening to kill contrary to Section 223 (1) of the Penal Code.
  - v. That the Appellant did not get justice as he was coaxed by the Honourable court. That the honourable trial magistrate allowed the prosecutor to deny the appellant's advocate virtual cross examination on grounds that the complainant is elderly and also to the remaining witnesses.
  - vi. That he took plea in court and mention in the same court but In the hearing date, the appellant's name was missing in the cause list and the appellant proceeded to court 1 as usual where his named was not called in court I and on enquiring the appellant found that the matter was called in court 2 and warrants issued.
  - vii. The appellant prays that the high Court gives him physical appearance while hearing this case.
4. The Appellant prays that this Appeal be allowed sentence be reduced or set aside and he be acquitted. The appeal was canvassed by way of both oral and written submissions.

### **Appellant's Submissions**

- 5. The appellant submits that the learned magistrate did not analyze the evidence properly under paragraph 7 line 1 that two men had gone to the slaughter house at 11:00 a.m. before PW4 and PW1 had notice the theft of the animals not noticing the sinister motives of PW1 and PW4.
- 6. He submits that Pw1 stated that he had a herd's boy but the trial magistrate failed to notice an error in her statement when he stated that PW1 milked the cows and also by stating that he was informed of the loss of the cows by her grandson in paragraph 8 line 2 and urged this court to analyze evidence properly. He further submitted that PW1 and PW4 adduced evidence in court in support of the case but no single neighbor or independent witness was called to ascertain their claim.
- 7. The appellant further submitted that the trial Magistrate sentenced him yet she knew very well that they had disputes before her court and she convicted him without looking at previous records and cases of PW1 and PW4 which he brought before her.
- 8. That the local administration has confirmed that cases brought before him were on land matters which the Appellant had stated which pw4 vehemently denied by PW 4 but accepted later when interrogated by probation officer as shown in findings in the 2<sup>nd</sup> last paragraph.



9. Further when the local administrator was interrogated by the probation officer, he confirmed that the Appellant had issue with him in plot no.23 which he had grabbed and developed pending a case with the sub-county officer. He submits that the learned magistrate with all these loopholes did not put it into consideration and terminate the case before her.
10. The Appellant submits that the learned magistrate contradicted PW 4 in paragraph 9 line 2 by stating that PW1 noticed the loss of the bulls contradicting PW4 sentiments of milking the animal at 1:00 pm.
11. That PW4 has not stated clearly how many times he went to Muserechi because he was there at 11:00 am before he noticed the loss of the animals at 1:00pm.
12. That when this court analyze critically the Learned Magistrate's judgement it will notice the loopholes in the evidence of PW4, PW2 and PW3 which are not consistent on time and description of the two men who first went to the slaughter house and those who went on 11<sup>th</sup> September,2022.
13. He submits that the investigations officer puts it clearly that he did not visit the farm to ascertain the loss of bull at the farm but relied on hearsay likewise to the Magistrate on the tight evidence proving the actual owner and prays that this case be terminated on grounds of insufficient, contradiction and precarious evidence.
14. The Appellant submits that the learned trial magistrate did not establish the two men who went to the slaughter house at 11:00am before the two bulls were noticed to be missing at 1:00pm by the PW4. He submits that PW1 did not give the name of the herds boy and from the Appellant's own observation, the men who could have gone to the slaughter house at 11:00 a.m. could be the said herds boy and PW4 if at all PW1 had a herds boy.
15. He submits that it was the prosecution's evidence that on 9<sup>th</sup> May, 2022 at 11:00 a.m., two men went to Muserechi slaughter house which the prosecution, investigating officer or the magistrate did not mind to know neither their identification nor their actual mission and according to him, it might have been PW4 and the purported herds boy who were scheming on how to have the Appellant incarcerated in prison for their actual plans to materialize.
16. He further submits that PW1 and PW2 knew the exact point where the Appellant had slaughtered animals and wonders why they did not go to Mogotio, Esageri neither Noiwet slaughter house but only Muserechi slaughter house and submit that PW4 has not come out clearly to inform the court how many times he visited the slaughter house.
17. Appellant submits that on the Criminal Case No.E800 of 2022, was withdrawn by the same court under Section 87a of the [Criminal Procedure Code](#) yet the prosecutor had said she has concrete evidence binding against the Appellant and requested the court to hold the Appellant for two days.
18. He submits that PW1 advised the grandson to report the matter at Mogotio Police Station and yet they were not certain whether the bulls had been slaughtered or in the neighbors or not they did avail the herds boy to court as a witness to ascertain their claims and ownership, showing out their shrewdness.
19. Further that PW1 and PW4 had left home to live in Mogotio town on claims that they were being threatened and yet they have not reported in any police station neither have they relocated to a refugee camp but are moving freely.
20. He submits that PW2 and PW3 contradicts themselves in their testimonies and time, and dare not consistent at all in their testimonies. That they state that they purported to follow the footprints at 1:00 p.m., and submits that there was no credible evidence other than speculations and suspicions that was tendered and urged this court to resolve benefit of doubt in favour of the appellant.



### **Submissions by State:**

21. Ms. Omari the prosecution counsel submitted that the accused was charged with 2 offences of stealing stock contrary to Section 278 of the Penal code and was convicted and sentence to serve 18 months imprisonment for each count.
22. On sentence, counsel submits that the accused is an uncle to the 1<sup>st</sup> victim and a son to the 2<sup>nd</sup> victim. That from the pre-sentence report filed in the lower court, he was described as problematic and nuisance to the public. He was sentenced to 18 months for the offence where the law provides for a period not exceeding 14 years and in the circumstances, the sentence was lenient. She urged this court not to disturb the sentence.
23. On conviction, she submits that the prosecution proved the case beyond reasonable doubt. That the prosecution through the witnesses showed how the complainants realized their 2 bulls were missing from the stock. That they followed to the slaughter house in Muserechi. That they were able to establish that it was the Appellant who had caused the 2 bulls to be taken to slaughter house and had taken meat, hooves and skin. That Pw 2 and Pw 3 who were at the slaughter house confirmed that it was the appellant who had given instructions to them to slaughter the bulls and he took the meat, hooves and skin. That not only did the Appellant steal the bulls but he caused the bulls to be slaughtered with intention of permanently depriving the owners which is stealing.
24. That he did not deny taking the bulls and giving instructions to be slaughtered but said his mother was not allowed to own cattle under his customary laws. She submits that the charges were proved beyond reasonable doubt and pray that the appeal be dismissed.

### **Rejoinder by Appellant:**

25. The appellant in a brief rejoinder informed the court that he had said they had land dispute and he had been charged with threatening to kill and that it is not about stealing stock. That after he was arrested for the offence of threatening, they went and distributed the land. That his brother and uncle are deceased and his mother has refused to take care of the total orphans. He stated that it is not about stealing stock but that they wanted to disinherit them. They currently do not have cattle and that they have a dispute over plot No.23.
26. He stated that the sentences were also to run concurrently but when he reached remand, he found out that they are running consecutively. He urged the court to consider his request since he is taking care of total orphans where one got first class and wanted to go for masters. That the orphans are in dire need and his children are also in school where one is in college and 3 in secondary school and his wife is unable to maintain them. That his health is also deteriorating in that he has spinal curve which requires physiotherapy.

### **Analysis and Determination**

27. This being the first Appellate Court, I am obligated to re-evaluate the evidence adduced before the trial court and arrive at an independent determination. This I do while aware of the fact that unlike the trial court, I did not get an opportunity to take evidence first hand and observe the demeanor of witnesses. For this I give due allowance. The duty of the 1<sup>st</sup> Appellate Court was explained by the Court of Appeal in the case of *Kariuki Karanja Vs Republic* [1986] KLR 190 where the court stated as follows:

"On first appeal from a conviction by a judge or magistrate, the appellant is entitled to have the appellate court's own consideration and view of the evidence as a whole and its own



decision thereon. The court has a duty to rehear the case and reconsider the material before the judge or magistrate with such materials as it may have decided to admit."

28. In view of the above, I wish to consider whether the ingredients for the offence of stock theft were proved beyond reasonable doubt. The Appellant herein was charged with stealing stock as observed above. Stealing is defined in the *Penal Code* as: -

"268.

- (1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.
- (5) A person shall not be deemed to take a thing unless he moves the thing or causes it to move."

29. Section 278 of the *Penal Code* states as follows: -

"278. 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, whether, goat, or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years."

30. PW1 Tapkili Teriki gave the trial court a vivid account on how she lost her bull. She stated that on 9<sup>th</sup> May, 2022 her bull was stolen. She said she received a call from his grandson Alex Siloi stating that her bull had been stolen and she advised him to rush to Muserechi and Esageri slaughter houses to check whether he could find their stolen bulls; the theft was reported to Mogotio police station and she later got information that the two stolen bulls were taken to Muserechi slaughter house and slaughtered.
31. PW2 Moses Kipkurui Kipsambu testified that he works at Muserechi slaughter house and on 9<sup>th</sup> May, 2022 at 5:00 a.m., he received a call from the appellant informing him that his bulls were on the way to the slaughter house and that upon arrival, he should slaughter the same for him. He said the Appellant gave him the description of the two bulls which were brown in colour and were being escorted by two herd boys. He said at 6:00 a.m., the appellant called again inquiring whether he had seen the bulls and pw2 confirmed that he had seen the two bulls and was just about to slaughter them. Pw2 said he slaughtered the bulls and at 7:00 a.m., the veterinary officer went to inspect the meat and later the accused went to the slaughterhouse with a vehicle and loaded the slaughtered bulls into the motor vehicle.
32. PW3 Abdi Kibiwott Ruto testified that he works at Muserechi slaughter house and on 9<sup>th</sup> May, 2022, he arrived at the slaughter house at around 6:00 a.m. where he met two young men escorting two Sahiwal bulls brown in colour. He said that one of the bulls had had a white head with horns and had been placed in the slaughter house pen. He said after a while the Appellant arrived and inquired why his bulls had not been slaughtered. He said he went to the slaughter house and slaughtered the bulls and later in the day around 11:00 a.m., two young men went and inquired about some stolen bulls and gave description of their stolen bulls and it appeared to him according to the description they gave that they were the bulls that he had earlier on slaughtered. He said the police went later in the day and he recorded his statement.
33. PW4 Alex Kipkosgei Siloi testified that the accused is his uncle and PW 1 is the accused's mother and that the accused has many cases of stealing stock. He said that on 9<sup>th</sup> May, 2022, he was at home at



- 1:00 p.m. milking the cows and after finishing he noticed that two bulls were missing from the stock. He said PW1 had 16 cows and his cows were mixed with PW1's cows. That the two bulls which were missing were brown in colour and one of the bulls had a white face and a brown body with horns while the other bull was purely brown in colour without horns. He said the bull with a white face belonged to PW1 and the one with purely brown colour was his.
34. He said he tried looking out for the bull in the farm and inquired from the neighbors if they had seen the cows but there was no positive response. He said he called PW1 and informed her of the missing bulls and then rushed to Mogotio police station and reported the matter.
35. That on 11<sup>th</sup> May, 2022, he went to Muserechi slaughter house and inquired if the employees of the slaughter house had by any chance their two stolen bulls and gave them a description of the two bulls. He said the employees informed him that description he had given fits the description of the bulls taken by the accused's employees to the slaughter house. He said he went to Mogotio police station to inform them of the new developments. He said accused lives five kilometers away from their home and has his own cattle pen.
36. PW5 No.222525 Corporal Kimwelel Ruto testified that he is attached at Olkokwe police station and he is the investigations officer in this case. That on 9<sup>th</sup> May, 2022, this case was reported at Mogotio police station by PW4 who reported that his two bulls had been stolen. He said that he called the complainant who informed him that he was in the cause of doing his own investigations to get to find out where his bulls were. He said the complainant later called him and informed him that his investigations established that his two missing bulls were slaughtered at Muserechi slaughter house and that the Appellant had sent two boys to escort the bulls to Muserechi. He said the complainant and his grandmother visited the station and recorded witness statements.
37. He testified that he later visited Muserechi slaughter house where he found employees PW2 and PW3 who informed him that on the material day of 9<sup>th</sup> May, 2022. PW2 got a call from the accused who instructed him to slaughter the two bulls. That he then went to the slaughter house where he found two young men who informed him that they had been sent by the appellant. That PW2 then picked the bulls and caused them to be slaughtered. That at around 7:00 a.m., the accused went with a pick-up truck and took the meat of the two slaughtered bulls and took them to Nakuru. He said that he requested for the bulls' skin but he was informed that the Appellant had taken it together with the heel and the hooves. He said that he then caused the accused to be arrested.
38. The 5 witnesses availed by the prosecution all explained how PW1 and PW4 discovered that the two bulls were missing and how the Appellant instructed two herd boys to escort the bulls to Muserechi slaughter house where PW2 and PW3 worked. PW2 testified that the appellant called and instructing him to slaughter the two bulls brown in colour which were on the way to the slaughter house. PW3 who is an employee of pw2 corroborated the evidence of PW2 by confirming that he received 2 bulls which were thereafter slaughtered following the appellant's instructions. PW2 and PW3 confirmed that the appellant went to the Muserechi slaughter house and collected meat from the two bulls slaughter using a pick-up vehicle.
39. PW4 while doing his own investigations discovered that the two bulls were slaughtered at Muserechi slaughter house under the instructions of the Appellant. PW4 gave description of the two bulls which had been stolen to PW3 who confirmed that the description exactly fits the bulls he had slaughtered under the instructions of the Appellant.
40. The claims by the Appellant that the prosecution's case contained inconsistencies and contradictions are not well founded because the evidence tendered is consistent and clear from evidence adduced, the



complainant described the colour of the bulls being brown in colour and the head of one was white. The conviction of the Appellant was therefore proper and well supported by the evidence tendered.

41. From the evidence adduced, there is no doubt that the appellant's stole the complainant's two bulls and caused them to be slaughtered at Muserechi slaughter and personally collected the meat using a pick up.
42. It is not every trifling inconsistency in the evidence of the prosecution witness that is fatal to its case. It's only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question before the court and therefore necessarily create some doubt in the mind of the trial court that an accused is entitled to benefit there from. In my view minor or trivial contradictions do not affect credibility of a witness and cannot vitiate a trial.
43. The Appellant complained that his defence was not considered. The appellant's contention that the animals were his is an afterthought. The appellant's defence does not raise any doubt on prosecution case. I do find that the evidence on record did prove both counts. The conviction is proper.

**(b) Whether sentence imposed was harsh and excessive**

44. On the issue as to whether the sentence meted out were too harsh, Sentencing is a discretionary matter Section 26(2) of the *Penal Code*. In Arthur Muya Muriuki –vs- Republic [2015] eKLR the Court of Appeal highlighted the following principles in sentencing;

“Sentencing is essentially an exercise of the trial court and for the court to interfere, it must be shown that in passing sentence, the court took into account an irrelevant factor or that a wrong principle was applied or short of these the sentence was so harsh and excessive that an error in principle must be inferred.”

45. In the case of Philip Nzaka Watu v. Republic [2016] e KLR, the Court of Appeal held:-

“However, it must be remembered that when it comes to human recollection, no two witnesses recall exactly the same thing to the minutest detail. Some discrepancies must be expected because human recollection is not infallible and no two people perceive the same phenomenon exactly the same way. Indeed, as has been recognized in many decisions of this Court, some inconsistency in evidence may signify veracity and honesty, just as unusual uniformity may signal fabrication and coaching of witnesses.

Ultimately, whether discrepancies in evidence render it believable or otherwise must turn on the circumstances of each case and the nature and extent of the discrepancies and inconsistencies in question”.

46. Section 278 prescribes a sanction of not more than 14 years imprisonment. The trial court however imposed sentence of 18 months imprisonment for each count. Upon considering circumstances of the offence herein and the maximum sentence prescribed above, I am of the view that the trial court imposed a very lenient sentence and I have no reason to interfere.

**Final Orders: -**

47. Appeal on both conviction and sentence is hereby dismissed.

**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

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**RACHEL NGETICH**

**JUDGE**

In the presence of:

- Mr. Omani for the state.

- Appellant.

- Court Assistant – Karanja.

