



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
OF KISII**

**Criminal Appeal 84 of 2007**

**MWITA MASIOGA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From the original conviction and sentence in the Senior Resident**

**Magistrate's Court at Kehancha Criminal Case No.1114 of 2006**

**by J. R. NDURURI ESQ., RM)**

**JUDGMENT**

The appellant was charged with stealing stock contrary to section 278 of the Penal Code. The particulars of the offence were that on the 21<sup>st</sup> day of November 2006 at Maeta location in Kuria District the appellant stole one cow valued at Kshs.8000/= the property of **Lucas Robi Sinda**. The appellant was tried convicted and sentenced to five years' imprisonment. The appellant was aggrieved by the conviction and sentence and preferred an appeal to this court.

He stated that there was insufficient evidence to convict him for the aforesaid offence.

The prosecution case briefly stated was that on the material day **Lucas Robi Sinda, PW1**, had tethered his cows on his field. At about 4.00 p.m. his wife went to the field to check on the animals but she found one of them missing. She reported to PW1 and they followed the cow's footmarks which led towards Tanzania. They found a certain river flooded and were therefore unable to cross the same and returned home. On the following day they received a report that the cow had been recovered and was in the home of one **Ole Siringiti Tambuchi, PW2**. PW2 said that he found the cow in his compound on the morning of 22<sup>nd</sup> November, 2006.

**William Ole Ntieri, PW3**, had seen the appellant driving a cow towards Transmara District on 21<sup>st</sup>

November 2006 at about 4 p.m. Shortly thereafter he learnt that the complainant's cow had been stolen. When the complainant described the stolen animal, PW3 realised that it was the same one that he had seen being driven away by the appellant.

**Samuel Maswe Mwita, PW4**, was at Migori River on the material day at about 4.00 p.m. He saw the appellant crossing the river towards Transmara District while driving a cow.

The appellant merely denied having stolen the complainant's cow. From the evidence on record, it is clear that PW3 and PW4 saw the appellant driving a cow towards Transmara District on the material day at around 4.00 p.m. The appellant was well known to both PW3 and PW4. PW3 identified the cow as being the one that had been stolen from PW1. PW2 found the cow in his compound but did not know how it got there. All the evidence pointed at the appellant as the one who had stolen the complainant's cow. His conviction was therefore warranted.

As regards sentence, the animal that was stolen was recovered. The appellant has been in jail for about one year and four months. He has been punished sufficiently. I therefore allow his appeal against sentence and reduce the same to the period already served. The appellant is now set at liberty unless otherwise lawfully held.

**DATED, SIGNED and DELIVERED at KISII this 30<sup>th</sup> day of October, 2008.**

**D. MUSINGA**

**JUDGE.**

Delivered in the open court in the presence of:

1. Appellant
2. Mr. Mwita, Senior Principal State Counsel for the Republic

**D. MUSINGA.**

**JUDGE.**