



REPUBLIC OF KENYA



**Mnyonga v Republic (Criminal Appeal E012 of 2024)
[2024] KEHC 15136 (KLR) (22 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E012 OF 2024
AN ONGERI, J
NOVEMBER 22, 2024**

BETWEEN

AMON MNYONGA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. A. M. Obura (Mrs.) (CM)
in Voi CMCR Case No. E723 of 2022 delivered on 6th December 2023)*

JUDGMENT

1. The Appellant was charged with the offence of stealing stock contrary to Section 268(1) as read with Section 278 of the [Penal Code](#).
2. The particulars were that on 12th November 2022 at around 1700 hours at Kirumbi area in Voi Sub County within Taita Taveta County, the Appellant stole a goat valued at Kshs. 10,000/= the property of Catherine Wanjala Kichoi.
3. The Appellant pleaded not guilty and the case proceeded to full hearing.
4. The prosecution called a total of five (5) witnesses whose evidence in summary was that the complainant's white and black goat disappeared on 12th November 2022 while grazing.
5. The caretaker, one Carlos Mwagholo who testified as PW3 searched for the goat and eventually found the skin of the goat and the intestines within a compound the Appellant was guarding.
6. The Appellant was found with the help of the villagers in a meeting and when confronted he admitted he had slaughtered the goat and sold the meat at Kaloleni.
7. The matter attracted a large crowd who threatened to lynch the Appellant. It was reported to the police and the Appellant was arrested. His offer to compensate the complainant was turned down.



8. Inspector Peter Kyalo took photographs of the goat skin and head which was found in a store in the same compound. The Appellant was subsequently charged in court.
9. The Appellant said in his defence that on a day he could not recall, he was confronted by people he did not know while he was in church. He said the people were armed with rungas and pangas and they demanded that he takes them to the place he used to graze livestock.
10. The Appellant called witnesses who said that the skin and the head were recovered in a neighbour's house and not the Appellant's house.
11. The trial court found that there was circumstantial evidence and relied on the doctrine of recent possession and convicted the Appellant and sentenced him to four (4) years imprisonment.
12. The Appellant has appealed to this court against both conviction and sentence on the following grounds:-
 1. That the learned trial Magistrate erred in both law and fact when she misdirected herself.
 2. That the learned trial Magistrate erred in both law and facts when she shifted the burden of proof from prosecution to the appellant.
 3. That the learned Magistrate erred in law when she considered the evidence adduced by prosecution full of massive contradiction.
 4. That the learned trial Magistrate erred in law in convicting the Appellant on poor investigation adduced by prosecution.
 5. That the learned trial court Magistrate erred in law fact by convicting the Appellant to 4 years imprisonment without considering that the sentence meted on the Appellant was harsh and excessive.
 6. That the learned trial court Magistrate erred in law fact by convicting the Appellant to 4 years imprisonment without considering the period spent in remand custody prior to conviction and sentence as requires Section 33 of the CPC.
 7. That the learned trial court Magistrate erred in law fact by convicting the Appellant to 4 years imprisonment without considering the Appellant's reasonable defence.
13. The Appellant stated in his grounds of appeal that that the learned trial Magistrate erred in both law and fact when she shifted the burden of proof from prosecution to the appellant. He said in the submissions that the complainant did not clarify where the skin and head were found.
14. That the learned Magistrate erred in law when she considered the evidence adduced by prosecution full of massive contradiction. He submitted that the complainant said she was with many witnesses when they brought the Appellant from a meeting yet none of them was called to testify and she also said there were many administration officers yet none was called to give evidence.
15. The Appellant stated that the learned trial Magistrate erred in law in convicting the Appellant on poor investigation adduced by prosecution. He submitted that no witness saw him taking away the goat and further, that the complainant did not say how she was able to identify the black and white skin as that for her goat since there are several black and white goats.
16. That the learned trial court Magistrate erred in law fact by convicting the Appellant to 4 years imprisonment without considering that the sentence meted on the Appellant was harsh and excessive.



17. That the learned trial court Magistrate erred in law fact by convicting the Appellant to 4 years imprisonment without considering the period spent in remand custody prior to conviction and sentence as requires Section 333 of the CPC.
18. That the learned trial court Magistrate erred in law fact by convicting the Appellant to 4 years imprisonment without considering the Appellant's reasonable defence.
19. The Respondent submitted that there was no direct evidence linking the Appellant to the commission of the offence and that the circumstantial evidence surrounding the recovery of the goat's skin and head inherently pointed to the guilt of the appellant.
20. That the skin was found in a ditch close to the Appellant's house and the head was found inside the house.
21. The Respondent submitted that the Trial court was right in relying on the doctrine of recent possession.
22. The issues for determination are as follows:-
 - i. Whether the Respondent proved their case to the required standard.
 - ii. Whether the conviction is safe and sentence lawful.
23. On the issue as to whether the prosecution has proved its case, I find that there is circumstantial evidence which is water tight.
24. In the case, *Abanga Alias Onyango vs.v Rep* CR A No.32 of 1990(UR) the Court of Appeal set out the principles to apply in order to determine whether the circumstantial evidence adduced in a case are sufficient to sustain a conviction. The Court of Appeal stated as follows;

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
25. In the case of *Teper v R* [1952] AC at p. 489 the Court had this to say about circumstantial evidence;

“Circumstantial evidence must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of accused's guilt from circumstantial evidence to be sure that there are no co-existing circumstances which could weaken or destroy the inference.”
26. I find that there were no co-existing issues to weaken the inference that it was the accused person who stole the goat.
27. The trial court was also right in relying on the doctrine of recent possession.
28. In the case of *Gedeon Meitekin Koyiet v Republic* [2013] eKLR, the Court of Appeal held that that the doctrine of recent possession is applicable if the prosecution proves:-
 - “ a) That the property was found with the suspect,



- b) That the property was positively identified by the complainant,
 - c) That the property was recently stolen from the complainant.
29. I find that there is evidence that the head of the goat was found in the house of the Appellant and the skin near the house.
30. The fact that all the witnesses who were present during the arrest were not called does not negate the testimonies of the five (5) witnesses who testified in this case.
31. Section 143 of the *Evidence Act* provides as follows;
- “No particular number of witnesses shall in the absence of any provision of law to the contrary, be required for the proof of any fact.”
32. I find that the sentence provided for under the law for the offence of stealing stock contrary to Section 268(1) as read with Section 278 of the *Penal Code* is 14 years imprisonment and the Appellant was sentenced to only four years imprisonment.
33. I find that the conviction herein is safe and the sentence lawful.
34. I dismiss the appeal and uphold both the conviction and sentence.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF NOVEMBER 2024 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor: Evah Kanyuira

Court Assistant: Maina/Trizah

Appellant

