



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO.27 OF 2017

HILLARY KIPYEGON BETT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence to Bomet PMs Court Cr. Case No. 295 of 2017 Hon P. Achieng)

JUDGMENT

The appellant was convicted and sentenced to 4 years imprisonment for the offence of stealing stock C/S 278 of the penal code.

The particulars are that between the nights of 20th and 21st March 2017 at Kaplio Village Kiplabotwa location – Bomet County, stole four goats of the value of Kshs.30,000/= the property of REUBEN RUTTO.

This is the first appellate court. It has a duty to consider and evaluate a fresh, the evidence on record so as to arrive at its own conclusions bearing in mind that it did not have the opportunity of observing the demeanour of the witnesses.

The prosecution in this case called four witnesses. The defence called one

Brief facts

The complainant is a farmer at Mulot. He testified that on the 20th day of March 2017 at about 7.00 pm he was at home. He tethered his goats under a granary store and went to sleep. The following day he found 4 from his twelve goats missing. He followed footprints which ended up on the tarmac road some 20 metres away.

He decided to contact some young men he knew at Ololulunga slaughter house to spy for him. Ronald Sigei and James Ngetich called him and informed him that they had seen the goats at Ololulunga. Complainant proceeded to Ololulunga. At the police station, he was shown the goats which he identified as his. Photographs were taken and they were released to him. He was also shown the accused who had been arrested in connection with the said goats.

Leonard Sigei (PW2) is also a resident of Mulot and deals with goat trade.

On 21/3/2017 he was contacted by the complainant who is his neighbour and was told to look out for his goats which had gone missing. In the company of James Ngetich they looked for the goats which they found at Ololulunga market. The accused was selling them. They apprehended him and took him to Ololulunga police station. They were later referred to Mulot. The complainant meanwhile arrived and identified his goats. PW2's evidence was corroborated by James Ngetich with whom they recovered the goats together at Ololulunga market.

PW4 was the arresting officer.

In his defence the appellant testified that he is a resident of Ololulunga and is a boda boda rider. On 15/3/2017 Nicholas Bett a neighbour caught him with his wife. A fight ensued thereafter and they became sworn enemies. On 21/3/2017 he woke up and went to the stage. After some trips he decided to park his motor bike at Ololulunga market. While there he saw Nicholas Bett in the company of PW2 and PW3. Nicholas went and grabbed his motor bike keys. PW2 and PW3 went and tied him with ropes and he was taken to Ololulunga police station.

It was alleged that he was selling goats. Later he was taken to Mulot police station and Longisa. Later he was charged with this offence.

The learned trial magistrate relied on the doctrine of recent possession as the accused was not found while stealing the goats but found when he was selling them.

She relied on the case of *Ng'ang'a Kahinga –VS- R Criminal Application No. 272 of 2005* (UR).

Which gave the ingredients of recent possession

- (i) That the property was found with the suspect.
- (ii) That the property is positively the property of the complainant
- (iii) That the property was stolen from the complainant
- (iv) That the property was recently stolen from the complainant

The learned trial magistrate found that the goats were the property

of the complainant. They were stolen from the complainant. He had positively identified the goats as his and that they were stolen during the night and a few hours before they could be sold the following day.

I do concur with the finding of the learned trial magistrate that the complainant did prove ownership. The accused denied that the goats were his. However he was found selling them by PW2 and PW3. He alleges that one Nicholas Bett bore a grudge against him as he had committed adultery with his wife. The complainant in this case is not Nicholas Bett but Reuben Kipkorir Ruto. The learned magistrate correctly dismissed the appellants defence.

I find that the conviction was safe and the sentence lawful.

The appeal is disallowed and the conviction and sentence are upheld.

Judgment delivered dated and signed this 20th day of December 2018 in the presence of learned counsel for the prosecution Miss Kariuki appellant in person present, Court assistant Mr. Rotich.

M. MUYA

JUDGE

20/12/18