



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL APPEAL NO. 109 OF 2015

(Being an appeal arising from conviction and sentence in Kitale Chief Magistrate's Court Criminal Case No. 47 of 2015 delivered by P. Biwott Senior Principal Magistrate on 25/9/2015)

TOM SIMIYU WEKESA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The appellant was charged with the offence of **Stealing Stock contrary to Section 278 of the Penal Code**. The particulars of the offence was that on the **30th day of December 2014 at Kerita Farm, within Trans Nzoia County jointly with another not before court, stole one cow valued at Kshs 35,000/- the property of Patrick Wesonga Mang'oli**.

2. The appellant was sentenced and convicted to serve 4 years imprisonment. He has appealed citing several grounds. I have read the written submissions both by the appellant and the Respondent.

3. The facts as presented in the trial are that **PW1 the complainant** had sent one Geoffrey to graze his cows which were 9 in number, 7 bulls and 2 cows. He apparently returned home with 8 of them and told him that the appellant and his co-accused had taken one by force. He reported the matter to the police. The appellant and his friend were arrested. They were his neighbours and had known them for over 5 years.

4. **PW2 Geoffrey Paul Wanjala** a class 6 pupil testified that he was looking after PW1's cows at Kerita forest on 30th December 2014. They were 8 in all, 4 cows and 4 bulls. The appellant and his 2 accomplices through threats took away one cow. He reported and the suspect later arrested. He had known them for 3 years.

On cross-examination he said that he screamed but no one came to his rescue.

5. **PW3 P.C. Amandi Saria** of Endebess police post investigated the matter and re-arrested the appellant. He visited the scene and recorded statement from the witnesses.

6. In his unsworn defence **the appellant** denied the charge. He said that on the material day he had gone to the farm and was tendering his tomatoes and vegetables. He said that at 5 pm he went to the neighbours home where there was a party and the police officers came arresting people who were partaking of illicit alcohol. He was arrested and later charged with the offence.

Analysis and Determination.

7. In his grounds of appeal the appellant has pleaded for a retrial; that the Magistrate convicting with the evidence of a single witness and faulted the trial court for rejecting his defence.

8. Clearly the testimony of PW2 was the only material evidence in this matter. The young boy explained how 3 people forcefully took the cow away from him on the material day. Apparently he knew the appellant for the last 3 years. There is nothing new to indicate that there was mistaken identity. Although the age of the minor was not explained I do not find anything in cross-examination either by the appellant or his co-accused to suggest that he was not in a position to appreciate issues.

9. Although there was discrepancies on the sexes of the cows, the bottom line in my view is that the child saw the appellant take away the cow. He said that he was threatened with death if he tried resisting. In my view I do not find any reason to doubt the witness. There was nothing to suggest any malice on his part.

10. The appellant's unsworn evidence does not touch on the issue of the cows. According to him he was implicated by one Paul Jabbroker. That he was arrested for he was found taking illicit brews. This line of defence was not tested in cross-examination. Its difficult therefore to rely on the same.

11. All in all I do not find the appeal meritorious. The same is dismissed. On the other hand I have considered the period served by the appellant in prison. I find that the same is sufficient punishment for the appellant. He shall therefore be released forthwith unless lawfully held.

Delivered, signed and dated this 11th day of December, 2017.

H.K. CHEMITEI

JUDGE

11/12/17

In the presence of:

M/S Kakoi for the Respondent

Appellant – present

Court Assistant – Kirong/Silvia

Court: Judgment read in open court.