



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

NYERI HIGH COURT CRIMINAL APPEAL NO. 10 OF 2013

IBRAHIM MURIUKI RASHID APPELLANT

VERSUS

REPUBLIC RESPONDENT

(An appeal from the conviction and sentence in original Mukurueini PM CR.593/2011 delivered on 10/1/2013 by MW MURAGE Resident Magistrate)

JUDGMENT

The appellant Ibrahim Muriuki Rashid was charged in the Magistrate court with the main charge of stealing stock contrary to section 278 of the penal code. The particulars of the offence are that on the 9th day of August, 2011 at Kibure village in Mukurueini district within the Nyeri County stole one Heifer cow valued at shs.14000 the property of Nancy Riba.

The appellant also faced an alternative charge of handling stolen goods contrary to section 322(2) of the penal code. The particulars of the offence are that on 19th August, 2011 at Mutheka location in Mathira District of the Nyeri County, otherwise than in the course of stealing, dishonestly received or retained one heifer cow knowing or having reason to believe it to be stolen or unlawfully obtained.

In count 2 the appellant is charged with the offence of being in possession of forged bank notes contrary to section 359 of the penal code. The particulars of the offence are that on the 9th day of August, 2011 at Kibure village in Mukurueini District within the Nyeri County without lawful authority or excuse had in his possession 14000 forged currency notes of one thousand denominations knowing them to be forged. The prosecution called 9 witnesses during the trial and the appellant gave sworn evidence. In her judgment the trial magistrate found the appellant guilty of the offence of stealing stock and sentenced to seven years imprisonment in count 2 being in possession of forged currency was sentenced to 3 years imprisonment and the imprisonment term to run concurrently.

The appellant was dissatisfied with the conviction and sentence and filed this appeal. He faults the trial magistrate for failing to notice that the prosecution evidence was riddled with contradictions; that the charge sheet was defective; that the learned trial magistrate did not consider his defence and that his rights under Article 50(1) of the constitution had been violated. The appellant filed written submissions in support of his appeal. He submitted that he never stole the cow as alleged but had bought it from the complainant and that the money he gave her was not forged. He further submitted that the evidence of the alleged KCB officials was detected that the money was forged was not tendered and finally that the investigations were shady and he did not commit the offence.

Mr. Njue for the Respondent opposed the appeal. He submitted that it is not in dispute that the appellant

bought the cow from the complainant and that consideration was shs.14,000/=. That the appellant gave the money to the complainant who released the cow. The money was found to be fake with several notes bearing the same number. Finally he submits that the payment of consideration using fake money was a fraudulent act and the buying of the cow was an fraudulent transaction which amounted to theft of the cow.

Briefly the evidence before the trial magistrate was that PW1 Nancy Riba the complainant was at her home on 9/8/2011 when the appellant and another person went to her to buy a cow, which she was selling to pay school fees. She showed them the cow and agreed at purchase price of shs.140,000/=. The appellant gave her 14,000 in notes of 1000 denomination. On 10/8/2011 she took the money to Wakulima bank where a bank sheff cautioned that it was fake. They took it to KCB who confirmed the same. The complainant reported the matter to police and surrendered 8000 of the notes to police. The same was examined and found to be fake currency. The appellant was arrested and charged with the offences.

The appellant gave sworn evidence. He testified that on 16/8/2011 he bought the cow from the complainant and took it home. He paid shs.14000. On 19/8/2011 he sold the cow to one Kinyua who was arrested with the cow. Appellant who called and went to the police station where he was charged with present offence. On being cross-examined by prosecution the appellant cautioned that it is him who gave the complainant the money.

Upon consideration of the above evidence which was tendered before the trial magistrate; I find that it is not in dispute that the appellant approached the complainant to buy the cow. The appellant admits that he gave the complainant shs.14000 in notes. This is the “money” which was presented to the bank was found to be fake which was confirmed by government examiner.

The trial magistrate properly analysed the evidence and considered that appellants evidence and arrived rigaly in my view that the appellant had presented to the complainant fake currency to buy the cow and fraudulently took the cow which amounted to an act of stealing the cow. I am satisfied that the conviction was supported by the evidence on record and the sentence legal. I dismiss the appellant’s application.

I uphold the conviction and affirm the sentence of the trial magistrate.

Dated at Nyeri this 11th November, 2015

S RIECHI

JUDGE

31/3/2016

Before – HON J RIECHI – JUDGE

Catherine – C/clerk

Appellant – present

Njue for state – present

Court – judgment read over and delivered in open court in presence of appellant and Mr. Njue for respondent this 31st day of May, 2016.

S RIECHI

JUDGE