



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMA BAY
CRIMINAL APPEAL NO.31 OF 2016

BETWEEN

EZEKIEL OMONDI OUMA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from original conviction and sentence in criminal

case No.264 of 2015 of the CM's Court at Homa Bay)

JUDGMENT

1. EZEKIEL OMONDI OUMA (the appellant) was convicted on a charge of stealing stock contrary to **Section 278 Penal Code** and sentenced to serve 3 years imprisonment.
2. The particulars of the charge stated that on 25th April 2015 at MARINDI area in Homa Bay, the appellant stole 2 goats valued at Kshs.7000/=, the property of Elizabeth Anyango Otieno.
3. The appellant denied the charge and prosecution called a total of 6 witnesses in support of the case.
4. The evidence presented by Elizabeth Anyango (PW1) who owned the two goats is that she tethered them outside her compound in MARINDI at about 6.00 a.m. She went to work at her shamba and remained there until 1.00 p.m. when a messenger approached and told her that she was urgently required at the police station. At the police station she found the appellant, her husband, her brother in-law and two police officers, and the goats tethered within the compound.
5. She was asked whether she recognised the goats and confirmed them to be hers by their colour – one had a brown colour on the back and black on the belly and the ears were marked with white dotted colour. She also identified them as the ones in the photographs which were produced as exhibit in court. She was informed by police that the appellant had been found with the goats.
6. RICHARD OTIENO (PW2) Elizabeth's husband narrated how he was on his way from MARAM centre where he had gone to visit his cousin FRED ONYANGO. The two of them were on a motor cycle when he spotted the two goats being led by the appellant. The four stopped and inquired about the goats from the appellant who said he was taking them to be sold at the market. They posed as interested buyers and the appellant named his price and they bargained but could not settle on a figure.
7. It was at that point that PW2 informed the appellant that those were his goats. He apprehended him and led him to the police station along with the goats. He described the goats as:-

“one goat had a brown black dark belly and dotted ears, and the other one had some white mark around the belly, the ears, and white-grey colour...”

8. PW2 who sells jiggery denied claims by the appellant that the whole case was a frame up due to some money he owed the appellant for work done.

9. FRED KONYANGO (PW5) gave evidence which corroborated that of PLW4. He was the one riding a motor cycle with PW2 as his pillion passenger, when the latter spotted the two goats. He confirmed the haggling over the price and identified the goats saying one was black dotted red and white and the other was red dotted black on the front leg. He identified the same animals in the photographs produced at the hearing.

10. On cross examination PW5 explained to the appellant that they did not raise an alarm because that would have attracted a mob which could have killed him (the appellant).

11. APC WESLEY CHIRCHIR (PW3) confirmed that the appellant was handed over to him by 2-3 people who claimed he had stolen the goats which were identified to him. The appellant and the two goats were handed over to CPL Beatrice Chacha.

12. The appellant’s own defence was that he had previously worked for the complainant at his jiggery business. However they disagreed as appellant was not being paid his dues and appellant left employment. When he met PW2 on that day, he asked him about his unpaid dues but they disagreed. PW2 went to the police station and spiced the situation, claiming he had been a victim of the appellant’s theft.

13. In the appeal what is challenged is not the conviction, but appellant expresses remorse for his deeds and prays that the sentence be reduced – he reiterated this even at the hearing of the appeal.

14. Mr. Oluoch, on behalf of the State opposed the appeal saying the offence attracts a maximum sentence of 14 years imprisonment, and the 3 years meted to appellant was not manifestly harsh or excessive.

15. Are there any special circumstances to warrant interfering with what in every sense was a legal sentence? The appellant has not demonstrated any special circumstances whether personal or social, or even any that relates to the incident. Taking into consideration the circumstances under which the offence was committed and the appellant’s intention of quickly disposing of the animals which were only thwarted by sheer coincidental meeting with the owner of the goats, I can only say the appellant deserved what he got.

16. Consequently, I find no reason whatsoever to interfere with the sentence, it was legal and proper so the appeal fails and is dismissed.

Delivered and dated this **22nd** day of **September, 2016** at Homa Bay.

H.A. OMONDI

JUDGE