

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NO. 15 OF 2014

YUSSUF ADAN ABDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From the decision in Mandera SRM Criminal Case No. 24 of 2014 – C.A. Mutai AG. SPM delivered on 3/04/2014)

JUDGEMENT

This matter was forwarded to this court by the Mandera court as a revision matter under section 364 of the Criminal Procedure Code (Cap. 75).

The convict was charged in the subordinate court with stealing stock contrary to section 278 of the Penal Code. The particulars of the offence were that on 13th January 2014 at Shafe Shate Sub Location Central Location in Mandera County stole one goat valued at Kshs. 8,000/= the property of Abdikadir Adan Abdi. In the alternative he was charged with handling stolen property contrary to section 322 (2) of the Penal Code. The particulars of offence were that on the 9th January 2014 at Shafe Shate Sub Location Mandera town within Mandera County other than in the course of stealing handled one female goat brown in colour knowing or having reason to believe it to have been stolen or unlawfully obtained.

He pleaded not guilty to the main count. He however pleaded guilty to the alternative charge. The facts were then given by the prosecutor who stated as follows

“On 13th January 2014 at Shafe Village in Shafe Shate Sub Location within Mandera County accused Yusuf Adan Abdi went to his father’s flock which were in a herding field and took one female brown goat valued at Kshs.8, 000/= and proceeded to Soko Mbuji market in Mandera town. After complainant was informed of same he went and reported to Kenya Police Reservist Alio Ibrahim Wako. They both tracked for the stolen goat which led them to Soko ya Mbuji market in Mandera. They found the goat being handled by the accused person and managed to recover same from accused person. Accused with goat were escorted to Mandera Police Station where the goat was photographed and then handed to the complainant. Accused was later charged with the offence of stealing the goat and arraigned in court. Accused: The facts are true”.

The court then went on to convict the convict on his own plea of guilty in respect of the alternative charge and sentenced him to pay a fine of Kshs. 200,000/= or in default to serve three years imprisonment on 3/4/2014.

Later the 10th of April 2014 the learned magistrate recorded that the conviction and sentence on the alternative count was irregular. The magistrate further ordered that the file be placed before the High Court in Garissa under section 364 (1) of the Criminal Procedure Code for revision.

Under section 364 of the Criminal Procedure Code the High Court has jurisdiction to review and correct any irregular order made by a subordinate court in criminal matters.

I have perused the record. The convict pleaded guilty to the alternative count of handling stolen goods. The facts narrated by the prosecutor however relate to the main count of theft of livestock. In effect the

learned magistrate should not have convicted for the offence of handling stolen goods. The conviction on the alternative count was thus irregular. The sentence imposed, other than being harsh for a first offender, was also irregular.

As the facts did not disclose the offence of handling stolen goods, the magistrate should not have convicted. Instead he should have entered a plea of not guilty and proceeded to hear evidence.

In exercise the powers of this court under section 364 of the Criminal Procedure Code I quash the conviction of the convict and set aside the sentence. If the convict paid the fine then same should be refunded to him. Otherwise I order that the convict be set at liberty forthwith unless otherwise lawfully held.

Dated and delivered this 22nd April, 2015

GEORGE DULU

JUDGE