



IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 127 OF 2012

ROBERT WANYAMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Criminal Case No. 3023 of 2012 Republic vs Robert Wanyama in the Principal Magistrate's Court at Eldoret by F. N. Kyambia, Principal Magistrate dated 17th July 2012)

JUDGMENT

1. The appellant was convicted on his own plea of guilty on a count of unlawfully *de-pasturing* in the forest contrary to section 52 (1) of the Forest Act, Number 7 of 2005. He was sentenced to a fine of Kshs 50,000 or six months imprisonment in default. The appellant has appealed against the conviction and sentence.
2. The particulars of the charge were as follows-

“On the 16th day of July 2012 at Nzoia Forest in Lugari District within Western Province was found illegally de-pasturing three herd of cattle in young plantation destroying young trees valued at Kshs. 1000 the property of Kenya Government without permit from the Kenya Forest Service.”

3. The appellant is aggrieved by the conviction and sentence. The petition of appeal was filed on 20th July 2012. It urges three grounds: That the charge sheet was defective; that the proceedings were conducted in a language that the appellant did not understand; and, that the sentence was harsh and excessive.
4. At the hearing of this appeal on 24th November 2014, the appellant acted in person. He pleaded with this Court for leniency. He stated that he *used* to pay for a permit to graze cattle in the forest but that on the material day, he was out of pocket. He nevertheless drove the cattle into the forest. He said his wife is sick and admitted at Kitale Hospital; he does not even have funds to pay for her hospitalization. He also said that his father relies on him for his upkeep. From those submissions, it was clear the appellant was challenging the sentence handed down for being harsh and excessive.
5. The appeal is contested by the State. The case for the State is that the plea of guilty was unequivocal. It was also submitted that the sentence was well within the law. In the circumstances, the learned state counsel submitted that the conviction and sentence cannot be impeached.
6. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.

7. I have carefully studied the records of the trial court. I am satisfied that the proceedings were conducted in English with *Kiswahili* interpretation. Before the plea was taken, the court enquired from the appellant the language he understood. At page 4 of the record, he replied as follows- “*I understand Kiswahili*”. The substance and ingredients of the charge were then read to him. The appellant pleaded *guilty*. The appellant never raised any issue relating to the language or proceedings.
8. The facts read in court were as follows: on the material day, forest guards were on patrol in Nzoia Forest in Lugari when they came across the appellant grazing three head of cattle in the forest where young trees had been planted. They arrested him and took him to Turbo Police Station. The appellant was then charged with the offence.
9. When the facts were read to the appellant, he confirmed them to be correct. A plea of guilty was entered. The appellant even mitigated and told the court: “*I pray for leniency*”. The trial court considered the mitigation offered by the appellant before handing down the sentence.
10. Upon reappraisal of those facts, I find that the appellant’s plea of guilty was *unequivocal*. The submission that he did not *follow* the proceedings is not borne out by the record. From the facts read out in court, all the ingredients of the offence were present.
11. Under section 52 (1) (e) of the Forests Act, it is an offence to “*de-pasture or allow any livestock*” in a state, local authority or provisional forest without a licence, permit or management agreement issued under the Act. *Livestock* is defined in section 3 to include domesticated animals such as cattle, goats, sheep, asses, horses, camels and pigs. The appellant was grazing cattle in the forest without a licence, permit or management agreement. The charge was *not* thus defective. The facts read out were not at variance with the charge sheet either. The appeal against conviction is thus devoid of merit. I find that the appellant was properly convicted for the offence under section 52 (1) (e) of the Forests Act.
12. That leaves the matter of the sentence. Section 52 (2) of the Act provides for a sentence of a *fine* of not *less* than Kshs 50,000 or to *imprisonment* for a term of not *less* than six months. The hands of the learned trial Magistrate were thus tied by the law. He gave the most lenient sentence in the circumstances.
13. I commiserate with the appellant but I regret that my hands are equally tied in the matter. It is not lost on me that the object of the Forests Act in its short title is to *establish, develop and promote sustainable management of forests including rational utilization of forest resources and the socio-economic development of the country*. The sentence must be seen through the lenses of protecting the *environment*. I also find that the sentence handed down was the *minimum* sentence and thus well *within* the law. Where the statute has set a minimum sentence, it would be a misnomer to say the sentence is too harsh or oppressive.
14. In the result, I find that the appeal is devoid of merit. I uphold the conviction and sentence handed down by the learned trial Magistrate. The entire appeal is dismissed.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 24th day of November 2014

GEORGE KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of

The appellant (in person).

Ms. Busienei for the State.

Mr. J. Kemboi, Court clerk.