



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 130 of 2011

(From Original Conviction and Sentence in Criminal Case No. 201 of 2010 of the Senior Resident Magistrate's Court at Taveta – C. N. Ndegwa (SRM))

STEPHEN KIMWELI SIMU APPELLANT

- Versus -

REPUBLIC RESPONDENT

JUDGMENT

The Appellant was sentenced to seven years imprisonment for the offence of unnatural offence contrary to Section 162(b) of the Penal Code.

The particulars are that on the 26th day of June 2010 at around 2.00am at Kitobo Location in Taita Taveta District of the Coast Province had carnal knowledge of an animal namely, a black she-goat the property of Alice Wambua.

The Appellant has raised several grounds in this appeal. The first one is as to the colour of goat in question. The particulars of the charge indicate that it was a black goat whereas PW3 had referred the goat as a red one.

The second ground is whether the Veterinary Officer did examine the goat. It is contended that he had indicated that he had observed that the vaginal was swollen but dry but on cross-examination stated that he did not know what had caused the swelling.

Thirdly he faults the evidence of arrest.

On the first ground. I have had the opportunity of observing the photograph of the goat which was produced as Exhibit No. 1. Principally the colour of the goat is black but it also does bear shades of colour brown. It is not read as I do not imagine a red goat exists. The discrepancy, however, is not fatal to the prosecution case.

On the second ground. The Veterinary Officer did examine the goat and did produce before the Court an Animal Injury Report (Exh No. 2). He could not know what caused the swelling of the goats birth canal as he was not present during the commission of the offence.

Lastly, on the issue of arrest, the Appellant was arrested by the son of the complainant while at goat's pen but briefly managed to extricate himself but was re-arrested by members of public.

I am satisfied that the Appellant was caught red-handed at 2.00am while he was humping a goat. There is sufficient and overwhelming evidence to the effect that he had carnal knowledge of this animal called a goat.

The conviction was safe. On the issue of sentence the offence carries a maximum of 14 years imprisonment. He had been treated as a first offender and was sentenced to 7 years imprisonment.

Bearing in mind that he was a first offender the sentence was harsh. I accordingly reduce it to 4 years imprisonment. He will accordingly serve 4 years imprisonment from the time of conviction. To that extent only does his appeal succeed.

Judgement read and delivered in open Court this 18th day of April, 2013.

M. MUYA

JUDGE

In the presence of:-

Ms Okwengu for the State

The Appellant - present

Court clerk – Mr. Musundi