



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 84 of 2012

RONALD MWAKABA MNGOLA APPELLANT

V

REPUBLIC RESPONDENT

JUDGMENT

The Appellant was convicted and sentenced on three counts. The first Count was that of Stealing by Servant whereby he was sentenced to 4 years imprisonment.

The second Count was that of obtaining by false pretences whereby he was sentenced to two years imprisonment. On the 3rd Count he was sentenced to one year. Sentence was to run consecutively.

In the first Count it was alleged that between the 1st October 2009 and 19th December 2009 at Taita Taveta County being the servant to Granton Samboja he stole 92 goats valued at Kshs. 230,000/-.

On the 2nd Count it was alleged that on the 31st day of October 2009 at Mwakishimba Village, Werugha Location, Taita Taveta County with intent to defraud he obtained from Mary Faraji Kshs. 57,000/- by falsely pretending that he had been sent by Granton Samboja to be given Kshs. 7,000/- to buy goats worth that amount.

In the third Count the particulars are that he stole ten iron sheets of the value of Kshs. 7,000/- the property of his employer Granton Samboja.

The complainant had ventured into a goat keeping project at his rural home of Werugha. He had left the

management of the project with his mother (PW1). The Appellant had been employed as the caretaker – cum – manager.

According to the evidence of the complainant's mother (PW1), she had first handed the Appellant 14 goats. He later told her that he had 22 goats. She gave him Kshs. 33,000/- to purchase the goats plus transport. This now totaled to 47 goats. She later gave the Appellant Kshs. 50,000/- to buy goats and Kshs. 7,000/- for transport purposes. She was later informed that the 50 goats had been taken to Landi Ranch. The Appellant was also given 10 iron sheets to construct a shed for the goats.

Later she was informed that only eight goats were found and the rest were missing from the hundred which the Appellant was alleging he had bought.

The complainant and his mother do not appear to know exactly how many goats the Appellant had purchased from the money he had been given. They seem to have relied on his word. There is no evidence from the people the goats had been purchased from or documentary evidence of the purchases. In his defence the Appellant did not shed light on the number of goats he had bought only stating that he had bought goats as instructed.

PW3 one Julius Tole had been given the task of constructing a cow shed for the complainant. It was meant for goats. A number of goats were taken there but he did not proceed to count them. He had finished constructing the shed and he was given another task of fencing the compound. Later when he went to the compound he found only 8 goats.

Rockline Mwachio had in the company of the Appellant bought 32 goats. The Appellant was to buy an additional 18 goats. He was later informed that only eight goats were found in the compound and the rest were missing. What comes out clearly from the evidence adduced before the trial Court is that the Appellant was given a total of Kshs. 90,000/- to purchase goats inclusive of transport.

Nobody ascertained as to whether he had actually bought the goats and if so how many. Much reliance was put on his word. The complainant believed that he had hundred goats in his farm but this way by way of word. He had not actually seen and counted the goats only to be shocked when told that only eight goats could be found. The Appellant could not have bought only eight goats with Kshs. 90,000/-. He either stole some of the goats or converted the money into his own use.

The conviction on the first Count is safe. The 2nd Count relates to obtaining by false pretences. There is evidence that he did buy 32 goats with part or whole of the sum. He cannot be charged with obtaining the money whereas there is evidence to the effect that he had bought goats for the complainant. These are the same goats alluded to in the first Count. As for the 3rd Count there is evidence to the effect that a shed was indeed constructed by PW3 one Julius Tole. The Appellant cannot be charged with stealing the same materials which were used for construction of the shed unless it is shown that the shed was interfered with. There is no such evidence and the conviction cannot stand.

The conviction and sentence on the 2nd and 3rd Counts is not on safe grounds and it is quashed and sentences set aside. The conviction on the 1st Count is upheld. On the 1st Count the Appellant was sentenced to 4 years imprisonment. The Court has noted that the exact number of goats stolen is only known by the Appellant.

The sentence is reduced to three years imprisonment. The upshot is that the Appellants sentence is reduced to three years from the time of conviction.

Judgement read and delivered in open Court this 14th day of May, 2013.

M. MUYA

JUDGE

In the presence of:-

Mr. Dzumo for the State

Counsel for the Appellant - absent

Court clerk – Mr. Musund