



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL APPEAL NO.124 OF 2009

(From the original conviction and in criminal case no.172 of 2009 of the Senior Resident Magistrate at Malindi Before C.Ocharo RM)

GARAMA KAHINDI MZUNGU.....ACCUSED

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGEMENT

GARAMA KAHINDI MZUNGU (the appellant was convicted on a charge of stealing stock contrary to section 278 Penal Code and sentenced to serve 10 years imprisonment. The charge against him was that on 28th January 2009 at Kajazini village in Malindi Location within Malindi District, jointly with others not before court, stole three she goats and one he-goat all valued @ Kshs.7000/-, the property of **MANYESO KALAMBI DADU**.

Initially appellant denied the charge and three witnesses testified for the prosecution. However later on the appellant changed his plea and admitted the charge. The facts as narrated by the prosecution were that the complainant suspected appellant and two others who have since died, had stolen his four goats. He reported the matter to the village elder and with the help of members of the public, they went to the suspect`s hide out. The suspects led them to the slaughter area where they found the skins and intestines. The members of public became furious and as they were being led to the police station, the mob beat them up seriously.

The police were called and on arrival found the three had been beaten unconscious, they were rushed to hospital where the other two suspects died – appellant was the only survivor and so he was charged. The recovered skin of the slaughtered animals were produced as exhibit 1. The appellant admitted the facts as true.

The prosecution informed the court that though he was a first offender the offence was serious. Appellant`s mitigation was that he was sorry. The Trial Magistrate took all these into account but noted that the goats were expectant and that it was a heinous crime calling for a deterrent sentence.

Appellant filed eight grounds of appeal basically stating he was remorseful and that the sentence imposed was harsh and excessive saying he never intended to steal the alleged goats but it was out of being jobless and the hunger on their family. Basically the appeal is on sentence which he urges this court to review. He filed written submissions in which he simply repeated how remorseful he was.

The appeal was opposed and **MR KEMO** on behalf of the prosecution urged the court to consider that appellant committed a most heinous crime by slaughtering the pregnant goats. Under section 278 of the Penal Code (the sentence) penalty is legal as the maximum sentence is 14 years imprisonment. However one must consider the circumstances surrounding the offence. Earlier in the testimony of Pw 1 before appellant changed his plea, it was disclosed that appellant and his colleagues had slaughtered the stolen goats and sold the meat. All the other details regarding how the appellant and his friends were cruel to the animals cannot be taken into account as he is not charged with the offence of cruelty to animals, but stealing them.

I take into account that as a result of the offence, the appellant and his colleagues received such severe beatings that they all lost conscious and two of them died. This means apart from the incarceration, appellant received physical punishment from the irate villagers. Apart from that I consider the value of the animals which is given in the charge sheet as Kshs.7000/- and my view is that ten years is rather harsh under the circumstances and I interfere with the sentence by setting it aside. Appellant has been incarcerated since the year 2009 – which is a total of three years and my view is that the period so far served is sufficient punishment and commiserate to the offence and so the sentence is substituted into three years imprisonment from date of conviction and is deemed to have been duly served.

Consequently the appellant shall be set at liberty forthwith unless otherwise lawfully held.

Delivered and dated this 6th day of October 2011

H A OMONDI
JUDGE